

PUBLICATION UPDATE

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Ohio Jury Instructions— Criminal

Publication 4346

Release 21S2

September 2021

HIGHLIGHTS

This release includes revisions to the following:

- User's Guide
- Chapter CV 415— Innkeepers
- Chapter CV 455— Civil Relief for Criminal Conduct

User's Guide revised and updated.

Chapter CV 415 contains one revised instruction on innkeeper and servant liability, one revised instruction on loss of guest property: special arrangement, and one revised instruction on loss of property after check-out.

Chapter CV 455 includes one revised instruction on civil remedy for person injured by criminal act.

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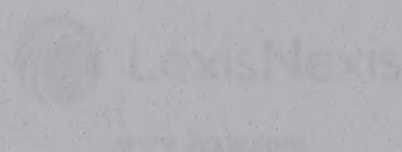
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USER'S GUIDE to *Ohio Jury Instructions* [Rev. 8/5/20]

- **What is *Ohio Jury Instructions*?** *Ohio Jury Instructions* (“*OJI*”) is a collection of non-binding model instructions prepared by the Ohio Judicial Conference’s Ohio Jury Instructions Committee. Although often cited with approval by courts, including the Supreme Court of Ohio, *OJI* is not considered binding. The template instructions set forth in *OJI* are primarily intended for use by judges in instructing juries in the state and federal courts of Ohio when Ohio law is involved in a case. Practitioners can utilize *OJI* to submit requested jury charges.

- **Mission Statement.** *OJI*’s mission is to provide neutral template instructions that are understandable and provide jurors with the law and procedure necessary to enable them to reach fair and just verdicts.

- **Organization.** Published in both electronic and print form, *OJI* is divided into two volumes, one for civil and one for criminal. The civil volume consists of one book, while the criminal volume consists of two books. Each volume is further divided into *titles*, with each title indicating a broad category of related content. Each title is then separated into *chapters* that focus on a more narrow set of related content. Each chapter contains individually numbered *instructions* that set forth specific jury charges on a particular topic.

- **Examples of Titles:**

Title 3: General Civil Trial Instructions

Title 4: Civil Subject Matter Instructions: Tort-Related

Title 5: Civil Subject Matter Instructions: Contract-Related

- **Examples of Chapters within Title 4:**

Chapter CV 401 Negligence

Chapter CV 403 Comparative Negligence

[chapter designations continue until]

Chapter CV 453 Tortious Interference with Economic Relations

- **Examples of Instructions within Chapter CV 453:**

CV 453.01 Tortious interference with business relations

CV 453.03 Tortious interference with contractual relations

CV 453.05 Tortious interference with employment relations

- **Finding an instruction by topic.** Each volume of *OJI* contains a table of contents prepared by the Ohio Jury Instructions Committee and an index prepared by the print publisher. In the criminal volume, instructions are grouped by topics that generally

mirror the criminal statutory scheme set forth in the Ohio Revised Code. In the civil volume, instructions are grouped by topics into titles that are generally related by legal concepts or themes. For example, the chapters in Title 5 all deal with contract-related topics. Within titles, narrower topics generally follow broader topics in the same related area. For example, "Contracts" is the first chapter in Title 5 and is followed by such chapters as the "Uniform Commercial Code" and the "Consumer Sales Practices Act."

- **Headings.** Each numbered instruction in *OJI* has a descriptive title. Within that titled instruction, there are often multiple instructions, or sections, many of which include descriptive titles, as well as possible sub-sections with their own headings.

- **Example of title of civil instruction:**

CV 417.01 Standard of care: physician/surgeon

- **Example of title of civil section heading:**

CV 417.01 Standard of care: physician/surgeon, § 1. INTRODUCTION.

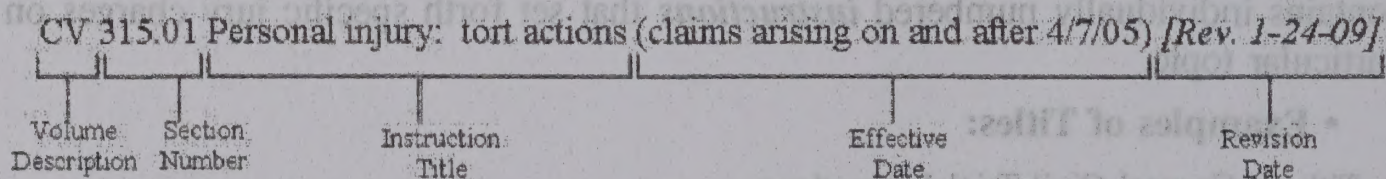
- **Example of title of criminal instruction:**

CR 521.31 Obstructing official business R.C. 2921.31

- **Example of title of criminal section heading:**

CR 521.31 Obstructing official business R.C. 2921.31, § 2. PRIVILEGE.

- **Instruction heading diagram.** The descriptive title of each instruction is comprised of several important pieces of information. A diagram of an example instruction heading and descriptions of the head pieces includes:



- **Volume description.** Two letters will indicate whether an instruction is included in the civil (CV) or criminal (CR) volume of *OJI*.

- **Section number.** The first three digits of the section number indicate the chapter in which the instruction is located. The digits following the decimal point indicate where in the chapter the instruction is located. Criminal instructions generally mirror the criminal statutory scheme set forth in the Ohio Revised Code.

- **Instruction title.** Each numbered instruction in *OJI* has a descriptive title.

- **Effective date.** Users should note that there are often multiple versions of an instruction corresponding to select dates of applicability. These multiple versions are arranged chronologically by *effective date*. For example, amendments to or judicial interpretation of a criminal statute may necessitate different versions of an instruction explaining different elements or definitions. The *effective date* of an instruction is indicated in a parenthetical accompanying its title.

- When a **significant substantive change** has occurred, such as a change in the elements of a crime, there will be a separate instruction covering the time period involved, which will result in *multiple instructions* separated by their distinct effective dates.

- **Example:**

CR 503.02 Murder R.C. 2903.02 (offenses committed on and after 9/6/96 but before 6/30/98) and CR 503.02 Murder R.C. 2903.02 (offenses committed on and after 6/30/98) [Rev. 2/24/07]

- When a **minor change** has occurred, the change will be reflected *within* the text of *one* instruction, with a parenthetical indication of the effective date of the change.

- **Example:**

CV 451.19 Affirmative defenses, § 4. UNFORSEEABLE USE OF PRODUCT (Common law claims only arising before 4/7/05).

- **Revision date.** More recent instruction titles are followed by an italicized and bracketed indication of when the Ohio Jury Instructions Committee last drafted or revised that instruction. Users are cautioned that instructions can quickly become outdated due to changes in statutes and case law. Additional research to validate whether any given instruction is up to date is recommended.

- **Example:**

CV 453.01 Tortious interference with business relations [Rev. 2/23/08]

- **Use of (ADDITIONAL).** Section headings may be accompanied by the parenthetical characterization “ADDITIONAL.” The use of “(ADDITIONAL)” means that the trial judge *should* read and submit the instruction to the jury only when it is applicable or required based on the specific circumstances or facts of the case involved.

- **Example:**

CV 517.07 Collateral in possession of secured party R.C. 1309.27 [UCC § 9-207] [Rev. 2/24/07], § 3. FUNGIBLE (ADDITIONAL).

- **Use of (OPTIONAL).** Section headings may be accompanied by the parenthetical characterization “OPTIONAL.” “OPTIONAL” instructions may be used to further define or amplify an existing instruction. The use of “(OPTIONAL)” means that the trial judge *may* read and submit the instruction to the jury when it is applicable based on the specific circumstances or facts of the case involved. Inclusion of an “OPTIONAL” instruction is at the discretion of the trial judge.

- **Example:**

CV 417.01 Standards of care: physician/surgeon [Rev. 3/28/09], § 7. FREEDOM FROM NEGLIGENCE (OPTIONAL).

- **Sections within instruction.** Each instruction in *OJI* is usually broken into numbered sections, which can be further broken into lettered subsections. Often this will track statutory numbering and lettering. For example, subsections in a criminal instruction may include (A), (B), and (D)—skipping (C) if the statutory (C) does not constitute an offense. Definitional sections always follow the order in which the terms were first used in the body of the preceding instruction.

- **Need to fill in blanks.** Within a section of an instruction, there may be places where a blank exists. Users must fill in the blanks with the applicable information arising from the circumstances and facts of the case involved.

- **Example:**

CV 425.03 Negligence in proprietary functions, § 1(B). IDENTIFYING A PROPRIETARY FUNCTION. The decision whether a particular activity relates to a proprietary function is a matter of law for the court. I instruct you that _____ is a proprietary function (and that _____ is not a proprietary function).

- **Example of actual instruction given to jury:**

The decision whether a particular activity relates to a proprietary function is a matter of law for the court. I instruct you that selling used computers is a proprietary function and that awarding contracts for the construction of roads is not a proprietary function.

- **Parenthetical alternatives.** Within a section of an instruction, there may be two or more possible choices presented as alternative content contained within separate parentheses. Sometimes the alternatives indicate possible choices that will have to be made so that the instruction matches the circumstances and facts of the case involved. Inapplicable choices should never be presented to the jury. At other times, the alternatives will indicate possible choices between content that mean the same thing; the trial judge should select the most clear or most easily understood choice. In written instructions distributed to a jury, the trial judge should delete the use of parentheses and instead simply include only the applicable word or words selected.

- **Example:**

CV 401.07 Foreseeability [Rev. 1/10/04], § 1. GENERAL. In deciding whether (reasonable) (ordinary) care was used, you will consider whether (the defendant) (either party) in question should have foreseen under the circumstances that the likely result of an act or failure to act would cause some (injury) (damage).

- **Example of actual instruction given to jury:**

In deciding whether reasonable care was used, you will consider whether the defendant in question should have foreseen under the circumstances that the likely result of an act or failure to act would cause some injury.

- **Parenthetical language.** Within a suggested instruction, there may be language contained in parentheses that is not an alternative content choice, but is instead content that the trial judge should read and submit to the jury only when it is applicable or required based on the specific circumstances or facts of the case involved. This parenthetical language serves the same function as model instructions contained in sections headings containing the use of "(ADDITIONAL)" as explained above. Because the parenthetical language is often less than a sentence, it has not received its own section heading.

- **Example:** If you find that the state proved beyond a reasonable doubt all the essential elements of the offense of _____, your verdict must be guilty (as to one or more of the defendants, according to your findings).

- **Multiple parentheticals.** Parentheses usually indicate two or more possible choices presented as alternative content. Sometimes, however, multiple parentheticals indicate two or more units of thought that, by virtue of necessary sentence structure, fall as back-to-back parentheticals, not all of which are alternatives to one another. The last

parenthetical(s) may require another selection between distinct alternatives or, as shown below, it may require insertion of a distinct unit of thought.

• **Example:**

The defendant caused the death of *(insert name of victim)* as a proximate result of *(committing)* *(attempting to commit)* *(insert name of offense of violence)*.

• **Italics.** Similar to the use of blanks, when content is placed in italics, a user must supply the specific necessary content.

• **Example:**

CV 453.07 Tortious Interference with expectancy of inheritance [Rev. 12/5/09], § 1. GENERAL. The plaintiff claims that the defendant intentionally interfered with his/her/its expectancy of inheritance from *(insert name of decedent)* and that the plaintiff was damaged as a result.

• **Presentation of alternatives.** Depending upon the circumstances and facts of the case involved, there is often a need to present alternative instructions to a jury. Alternative instructions are separated by “*(or)*.” When the trial judge should select only one of a number of possible alternative instructions, italicized language preceding the list of choices directs the judge to “*(Use appropriate alternative)*.” When there is a possible need to read and submit more than one alternative to the jury, italicized language preceding the list of choices directs the trial judge to “*(Use appropriate alternative[s])*.”

• **Example:**

CV 433.01 Right of publicity in individual's persona R.C. Chapter 2741 (claims arising on and after 11/22/99) [Rev. 5/8/10], § 4. COMMERCIAL PURPOSE. “Commercial purpose” means the use of or reference to an aspect of an individual's (name) (voice) (signature) (photograph) (image) (likeness) (distinctive appearance)

(Use appropriate alternative[s])

(A) on or in connection with a place, product, merchandise, goods, services, or other commercial activities;

(or)

(B) for advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities;

(or)

(C) for the purpose of promoting travel to a place;

(or)

(D) for the purpose of fundraising.

• **Example of actual instruction given to jury:**

“Commercial purpose” means the use of or reference to an aspect of an individual's distinctive appearance for advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities.

• **Comments.** *OJI* frequently includes material set out under the heading of a “COMMENT.” Comments generally include references to statutory and case law

authority that provide the source for the model instruction given. Other content included as commentary can include explanations by the Ohio Jury Instructions Committee for a model instruction, suggestions for the trial judge, and indications of what by consensus the Committee believes in regard to an instruction. Comments may also contain material explaining the applicability or limitations of an instruction. The research reflected in a comment should not be considered exhaustive and cannot be relied upon as the most current authority on the issue dealt with by the instruction. No material under a "COMMENT" heading should ever be read or submitted to the jury.

- **Use of "Drawn from."** "Drawn from" is used when the text of the instruction follows the language in the cited authority but not verbatim.

- **Example:**

CV 617.03 Invitee; business visitor [Rev. 10/9/09], § 4. OPEN AND OBVIOUS.

COMMENT

Drawn from *Armstrong v. Best Buy Co. Inc.*, 99 Ohio St.3d 79, 2003-Ohio-2573; *Simmers v. Bentley Constr. Co.*, 64 Ohio St.3d 642, 1992-Ohio-42. The "open and obvious" doctrine remains a viable part of Ohio law. The split among the appellate courts is effectively reconciled by the "attendant circumstances" exception to the doctrine. Both instructions ("open and obvious" and "attendant circumstances") should be given whenever the trial court has decided to instruct on "open and obvious."

In *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, the Court held that, although the open and obvious doctrine can excuse a defendant's breach of a common-law duty of care, it does not override statutory duties because the violation of a statutory duty constitutes negligence per se. In *Lang v. Holly Hill Motel, Inc.*, 122 Ohio St.3d 120, 2009-Ohio-2495, the Court held that the open and obvious doctrine may be asserted as a defense to a claim of liability arising from a violation of the Ohio Basic Building Code because administrative rule violations do not constitute negligence per se.

- **Definitions.** When an instruction uses a term or terms that need to be defined for a jury, a subsequent numbered section or subsection in that instruction provides either the definition or a reference to elsewhere in *OJI* or in the Ohio Revised Code where the definition to be read and submitted to the jury exists.

- **Examples:**

CV 453.07 Tortious interference with expectancy of inheritance, § 6. UNDUE INFLUENCE. "Undue influence" means that which overpowers the will of a person and induces him/her into making a distribution of his/her property that he/she would not have made if left to act freely and according to his/her own plans and desires.

CV 453.07 Tortious interference with expectancy of inheritance, § 7. REASONABLY CERTAIN. *OJI*-CV 315.01 (offenses committed on and after 4/7/05) § 10.

- **Verdict forms.** *OJI* includes some suggested templates for verdict forms, often set forth at the end of a particular instruction.

- **Interrogatories.** *OJI* sometimes includes model interrogatories. Generally, these are provided when interrogatories are required by statute or case law. Depending upon the

facts of the case and the number and identity of the parties, interrogatories may need to be modified, and judges should thoroughly examine and, if necessary, edit the interrogatories before submitting them to a jury.

- **Language and style.** When pronoun usage depends upon the gender-specific (or neutral) selection of content, *OJI* indicates the possible choices by using “he/she/it” or “his/her/its.” In selecting the applicable pronoun, the trial judge may elect to modify proposed choices to use gender-neutral language as appropriate. When the appropriate form of an article depends on the selection of content, *OJI* indicates the possible options by using “a/an.” The trial judge should select the applicable article and not provide the jury with both article options.

- **Other explanatory material.** Primarily intended for new judges and practitioners, *OJI* includes several sections discussing how to conduct a jury trial, including checklists and sample instructions. This material is set forth at Title 1 and Title 2 of both volumes.

- **Citation within *OJI*.** *OJI* adheres to the *Ohio Manual of Citations*. Where the *Manual* does not provide guidance on citation form, *OJI* then follows *The Bluebook: A Uniform System of Citation*.

- **Citation of *OJI*.** In the state courts of Ohio, users should follow the *Ohio Manual of Citations* when citing *OJI*.

- **Example:**

- *Ohio Jury Instructions*, CV Section 537.17 (Rev. Dec. 10, 2011)

- **Contributing suggestions to *OJI*.** The Committee welcomes input from both bench and bar. Proposed instructions or communications raising specific concerns that are supported by existing law or its interpretation may be submitted in writing through the Ohio Judicial Conference or members of the Committee.

The Commission has received information from various sources, including human rights organizations, that the Congolese authorities have committed serious violations of human rights. These violations include arbitrary arrests, torture, and the use of force against civilians. The Commission is deeply concerned about the situation in the Congo and is committed to investigating these allegations and bringing the perpetrators to justice.

The Commission has conducted extensive investigations into the allegations of human rights violations in the Congo. It has interviewed numerous witnesses, including victims and human rights activists, and has reviewed a large volume of evidence. The Commission has found that the Congolese authorities have committed serious violations of human rights, including arbitrary arrests, torture, and the use of force against civilians. The Commission is deeply concerned about the situation in the Congo and is committed to investigating these allegations and bringing the perpetrators to justice.

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OHIO JURY INSTRUCTIONS

*A collection of STANDARD JURY
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CRIMINAL INSTRUCTIONS
GENERAL
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INDEX

[References are to civil (CV) and criminal (CR) instruction numbers.]

A

ABDUCTION

Generally . . . CR 505.02

ABORTION OFFENSES

Definitions . . . CR 519.171

Eighteen years of age, performance of abortion on woman under . . . CR 519.12(B)

Falsification report . . . CR 519.171

Manslaughter, abortion . . . CR 519.13(A); CR 519.13(B)

Parent or guardian notification, failure to provide . . . CR 519.12(B)

Report falsification . . . CR 519.171

Trafficking . . . CR 519.14

Unlawful abortion

Generally . . . CR 519.12(A)

Parent or guardian notification, failure to provide . . . CR 519.12(B)

Partial birth . . . CR 519.151

Viability

Termination or attempted termination of pregnancy after . . . CR 519.17

Testing for, failure to perform . . . CR 519.18

Woman under 18 . . . CR 519.12(B); CR 519.121

ABUSE AND NEGLECT

Battered person syndrome . . . CR 417.43

Child abuse (See CHILD ABUSE AND NEGLECT)

Patient abuse and neglect

Generally . . . CR 503.34

False complaint, filing of . . . CR 503.35

ABUSE OF PROCESS

Generally . . . CV 435.01

Defined . . . CV 435.01

ACCELERANT

Use of accelerant to initiate or increase growth or spread of fire . . . CR 541.1425

ACCOMPLICES

Generally . . . CR 523.03

Testimony . . . CR 409.17

ACCORD AND SATISFACTION

Affirmative defense in contract claim, as . . . CV 501.25

ADDITIONAL ELEMENTS

Finding of; concluding instructions . . . CR 425.25

ADMONITIONS TO JURY

Generally . . . CV 301.07

Sample instructions . . . CR 205.03; CV 205.03

ADULTERY

Proof of . . . CV 701.05

ADVERSE POSSESSION

Generally . . . CV 601.03

ADVISORY INSTRUCTIONS

Generally . . . CR 101.57; CV 101.57

ADVISORY JURIES

Generally . . . CR 101.37; CV 101.37

AGENCY LIABILITY

Contracts . . . CV 423.01

Independent contractors . . . CV 423.07

Issues regarding negligence, presentation of (See NEGLIGENCE, subhead: Issues, presentation of)

Joint ventures . . . CV 423.05

Medical negligence by agents or employees of physicians . . . CV 417.11

Surety's liability on bond of agent . . . CV 513.01

Torts . . . CV 423.03

AGGRAVATING CIRCUMSTANCES

Damages, acceleration or aggravation of condition . . . CV 315.15

Specification in concluding instructions . . . CR 425.27

AID OR ABET

Escape (See ESCAPE, subhead: Aiding of)

Identity fraud . . . CR 513.49

AIRCRAFT-AIRPORT OPERATIONS

Endangering . . . CR 509.08

ALCOHOL OFFENSES

Firearm possession in liquor permit premises, illegal . . . CR 523.121

Insurance policy intoxication exclusion . . . CV 709.39

Intoxication (See INTOXICATION)

Liability for service of intoxicants (See INTOXICANTS, subhead: Liability for service of)

Traffic offenses

Insurance policy intoxication exclusion . . . CV 709.39

Operating under influence of alcohol or drugs

Generally . . . CR 711.19

Felony OVI specification . . . CR 541.1413

Physical control of vehicle while under influence . . . CR 711.194

Prohibited alcohol or drug concentration, operating with . . . CR 711.19(A)(1)(b)-(j)

Refusal to submit to chemical test . . . CR 711.19(A)(2)

Physical control of vehicle while under influence . . . CR 711.194

Prohibited alcohol concentration, operating with
Generally . . . CR 711.19(A); CR 711.19(A)(1)(b)-(j)

Defendant under 21 . . . CR 711.19(B)

Wrongful entrustment of motor vehicle . . . CR 711.203

Watercraft and waterways violations

Defendant under 21 years of age operating vessel with prohibited alcohol concentration . . . CR 547.11(B)

Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)

[References are to civil (CV) and criminal (CR) instruction numbers.]

ALCOHOL OFFENSES—Cont.**Watercraft and waterways violations—Cont.**

Prohibited alcohol or drug concentration, operating vessel with . . . CR 547.11(A)(2)-(6)

ALIBI

Defense of . . . CR 421.03

ALTERNATIVE COUNTS

Concluding instructions . . . CR 425.13

ANHYDROUS AMMONIA

Theft . . . CR 513.02

ANIMALS

Bestiality . . . CR 559.21

Companion animals, cruelty to . . . CR 559.131

Cruelty to companion animals . . . CR 559.131

Drugs for, trafficking in . . . CR 525.09(B)

Escape of animals, duty to report . . . CR 527.21

Exotic animals, crimes related to . . . CR 551.13

Fighting

Generally . . . CR 559.15

Dog fighting . . . CR 559.03

Liability for

Affirmative defenses . . . CV 409.03

Dog owners . . . CV 409.01

Domestic animals, owners of . . . CV 409.07

Wild animals, owners of . . . CV 409.05

Police dog or horse

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Service dog, theft of . . . CR 513.02

Wildlife violations (See WILDLIFE VIOLATIONS)

APPEAL ON INSTRUCTIONS

Generally . . . CR 101.15; CV 101.15

Error, based on . . . CR 101.17; CV 101.17

Prejudice, based on . . . CR 101.17; CV 101.17

ARREST

False arrest . . . CV 441.01

Impersonation of officer during . . . CR 521.51(C)

Resisting . . . CR 521.33

ARSON

Generally . . . CR 509.03

Aggravated . . . CR 509.02

Insurance claims . . . CV 709.11

Registry of offenders . . . CR 509.15

ASSAULT**Aggravated**

Generally . . . CR 503.12

Vehicular assault . . . CR 503.08

Civil assault . . . CV 429.01

Criminal assault . . . CR 503.13

Felonious . . . CR 503.11(A); CR 503.11(B)

Negligent . . . CR 503.14

Police dog or horse, of . . . CR 521.321

Vehicular . . . CR 503.08

ATTEMPT TO COMMIT CRIME

Generally . . . CR 523.02

ATTORNEYS

Fees in damage claims . . . CV 315.39

Intimidation of . . . CR 521.04

Professional negligence generally (See PROFESSIONAL NEGLIGENCE)

Self-representation by defendant . . . CR 401.03

AUDIOTAPES

Evidence, as . . . CR 409.29

AUTOMOBILES AND OTHER MOTOR VEHICLES**Accident, leaving scene of**

Generally . . . CR 749.02

Damage to property of others, involving . . . CR 749.03

Exchange of identity and vehicle registration, duty to provide . . . CR 749.02

Nonpublic road accident . . . CR 749.021

Alcohol offenses

Traffic offenses (See ALCOHOL OFFENSES, subhead: Traffic offenses)

Watercraft and waterways violations (See ALCOHOL OFFENSES, subhead: Watercraft and waterways violations)

Assault, vehicular . . . CR 503.08

Certificate of title, theft value . . . CR 425.23

Damages for damage or loss . . . CV 315.19

Driver's license offenses (See DRIVER'S LICENSE OFFENSES)

Firearms in, improper handling of . . . CR 523.16

Governmental liability for negligent operation of motor vehicle . . . CV 425.01

Homicide, vehicular (See VEHICULAR HOMICIDE)

Illuminating devices, failure to use . . . CV 411.71

Insurance policy intoxication exclusion . . . CV 709.39

Leaving scene of accident (See subhead: Accident, leaving scene of)

Lemon Law . . . CV 529.01

License offenses (See DRIVER'S LICENSE OFFENSES)

License plate or placard, theft value . . . CR 425.23

Lights, failure to display . . . CV 411.71

Livery, defrauding of . . . CR 513.41

Manufacturer's or importer's certificate form, theft value . . . CR 425.23

Minor, operation by . . . CV 407.09

Negligence involving (See NEGLIGENCE, subhead: Automobile negligence)

Nitrous oxide, possession in motor vehicle of . . . CR 525.33

Nonconforming motor vehicles (Lemon Law) . . . CV 529.01

Non-traffic offenses

Illuminating devices, failure to use . . . CV 411.71

Lights, failure to display . . . CV 411.71

Unsafe vehicle, operation of . . . CV 411.69

Plate or placard, theft value . . . CR 425.23

Reasonable control of vehicle . . . CV 411.15

Signal for stop, failure to obey . . . CR 749.01

Theft . . . CR 513.02

Title, theft value . . . CR 425.23

[References are to civil (CV) and criminal (CR) instruction numbers.]

AUTOMOBILES AND OTHER MOTOR VEHICLES—Cont.

Traffic offenses

Generally (See **TRAFFIC OFFENSES**)

Alcohol-related (See **ALCOHOL OFFENSES**, subhead: Traffic offenses)

Non-traffic (See subhead: Non-traffic offenses)

Unauthorized use . . . CR 513.03

Unsafe vehicle, operation of . . . CV 411.69

Vehicle identification numbers, tampering with

Generally . . . CR 749.62(A)

Counterfeit VINs . . . CR 749.62(C)

Owner's VIN . . . CR 749.62(B)

Possessing or dealing in tampered vehicles . . . CR 749.62(D)

Vehicular assault . . . CR 503.08

Vehicular homicide (See **VEHICULAR HOMICIDE**)

Willful or wanton disregard of safety of persons or property, operation in . . . CV 411.13

Windshield sticker, theft value . . . CR 425.23

Wrongful entrustment of motor vehicle . . . CR 711.203

B

BAD CHECKS

Passing of . . . CR 513.11

BAIL

Bailments (See **BAILMENTS**)

Bond agent practices, illegal

Misrepresentation . . . CR 527.27(B)

Reckless apprehension . . . CR 527.27(A)

BAILMENTS

Agreement, by

Generally . . . CV 629.01

Prima facie case . . . CV 629.03

Care, duty of . . . CV 629.01

Defined . . . CV 629.01

Return, duty of . . . CV 629.01

BATTERED PERSON SYNDROME

Defined . . . CR 417.43

BATTERY

Generally . . . CV 429.03

Sexual . . . CR 507.03

BIGAMY

Generally . . . CR 519.01

BINGO GAMES (See GAMBLING)

BIOLOGICAL WEAPONS

Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

BLACKOUT OR COMA (See COMA OR BLACK-OUT)

BLOOD SUPPLY

Contaminated blood, selling or donation of . . . CR 527.13

BOATS (See VESSELS)

BODY ARMOR

Specifications

Generally . . . CR 541.1411

Wearing of during commission of felony; concluding instructions . . . CR 425.19

Wearing of during commission of felony; specification in concluding instructions . . . CR 425.19

BONDS

Bail bonds (See **BAIL**)

Sureties (See **SURETIES**)

BREAKING AND ENTERING

Land . . . CR 511.13(B)

Structure . . . CR 511.13(A)

BRIBERY

Generally . . . CR 521.02

Solicitation by public official, improper (See **SOLICITATION**, subhead: Compensation by public official, improper)

BROKERS

Abandonment by . . . CV 605.07

Both parties, effect of acting for . . . CV 605.03

Commission, recovery of . . . CV 605.01

Damages by . . . CV 605.09

Duty to seller, broker's . . . CV 605.09

Failure of transaction . . . CV 605.05

BURDEN OF PROOF

Generally . . . CR 405.05; CV 303.03

Adultery . . . CV 701.05

Affirmative defenses . . . CR 417.27

Final instructions, sample . . . CR 207.11; CV 207.03

Insanity defense . . . CR 421.29

Insurance (See **INSURANCE**)

Negligence defense (See **NEGLIGENCE**, subhead: Burden of proof of defenses)

Paternity claim

Defendant as presumed father . . . CV 705.05

Non-defendant as presumed father . . . CV 705.03

RICO offenses

Acquiring or maintaining interest in enterprise or real property . . . CV 445.09

Conducting or participating in affairs of enterprise . . . CV 445.03

Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.21

Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.15

Support claim, in . . . CV 701.03

Will contests . . . CV 633.01

BURGLARY

Aggravated . . . CR 511.11

[References are to civil (CV) and criminal (CR) instruction numbers.]

BURGLARY—Cont.

Post-9/30/2011, offenses committed . . . CR 511.12
 Pre-9/30/2011, offenses committed . . . CR 511.12
 Trespass in habitation when person present or likely to
 be present . . . CR 511.12(B)

BURIAL SITES

Vandalism . . . CR 509.05(D)

BURN INJURIES

Failure to report . . . CR 521.22(E)

BUSINESS RELATIONSHIPS

Tortious interference with . . . CV 453.01

C**CABARET, ADULT**

Employee, illegal acts of . . . CR 507.53(C)
 Illegally operating . . . CR 507.40(B)
 Owner or operator, illegal acts of . . . CR 507.53(B)
 Permit, operation without . . . CR 507.53(A)

CABLE TELEVISION SERVICES

Theft of . . . CR 513.02

CABLE THEFT

Unauthorized device, possession or sale of . . . CR
 513.041
 Unauthorized use of cable, failure to report . . . CR
 521.22(A)

CALUMNY

Defined . . . CR 521.04

CAPACITY

Will, making of . . . CV 633.03

CASINOS

Gambling-related crimes . . . CR 515.15

CAUSATION

Generally . . . CR 417.23
 Intervening causes . . . CR 417.25
 Natural consequences, responsibility for . . . CR
 417.23
 Other causes as defense . . . CR 417.25
 Proximate cause
 Negligent acts (See NEGLIGENCE)
 Sample final instructions . . . CV 207.19
RICO offenses
 Acquiring or maintaining interest in enterprise or real
 property . . . CV 445.13
 Conducting or participating in affairs of enterprise
 . . . CV 445.07
 Conspiracy to engage in pattern of corrupt activity or
 collection of unlawful debt . . . CV 445.25
 Use or investment of proceeds in acquisition of real
 property, or establishment or operation of enter-
 prise . . . CV 445.19

CAUTIONARY INSTRUCTIONS

Generally . . . CR 101.57; CV 101.57

CEMETERIES

Vandalism . . . CR 509.05(C)

CHECKS

Bad checks, passing of . . . CR 513.11
 Theft, value . . . CR 425.23

CHEMICAL TESTS

Operating under influence of alcohol or drugs with re-
 fusals to submit to . . . CR 711.19(A)(2)

CHEMICAL WEAPONS

Illegal assembly or possession of chemicals or sub-
 stances for manufacturing of . . . CR 509.28
 Possession . . . CR 509.26
 Use, knowing or reckless . . . CR 509.27

CHILD ABUSE AND NEGLECT

Failure of person acting in official or professional ca-
 pacity to report known or suspected
 Generally . . . CV 407.25
 Cleric or church leader . . . CV 407.27
 False report, making of . . . CR 521.14
 Parental education neglect . . . CR 519.222
 Permitting . . . CR 503.15
 Sexual abuse . . . CR 519.22

CHILDREN (See also MINORS)

Abortion performed on woman under 18, unlawful
 . . . CR 519.12(B); CR 519.121
 Abuse or neglect (See CHILD ABUSE AND NE-
 GLECT)
 Administrator, action against parents by . . . CV
 407.17
 Care provider
 Death or serious injury of child, failure to disclose
 . . . CR 519.225
 Misrepresentation by . . . CR 519.224
 Cigarettes, illegal distribution of . . . CR 527.02(B)(1)
et seq.
 Consortium (parent-child), loss of . . . CV 315.03
 Custody, interference with (See CUSTODY, INTER-
 FERENCE WITH)
 Damages for child
 Generally . . . CV 407.23
 Consortium (parent-child), loss of . . . CV 315.03
 Earnings, loss of . . . CV 407.21
 Emancipation, effect of . . . CV 407.21
 Inclusion or exclusion in damages for parent
 . . . CV 315.27
 Negligence by parent, effect of . . . CV 407.17
 Delinquency or unruliness, contributing to (See JUVENILE
 DELINQUENCY, subhead: Contributing to
 delinquency or unruliness)
 Duty of parents . . . CV 407.15
 Earnings, recovery for loss of . . . CV 407.21
 Emancipation . . . CV 407.21
 Endangerment . . . CR 519.22
 Enticement, criminal . . . CR 505.05
 Family offenses (See FAMILY OFFENSES)
 Injury to, award for . . . CV 407.23
 Miscarriage, damages . . . CV 315.07
 Motor vehicle, operation of . . . CV 407.09
 Negligence (See NEGLIGENCE, subhead: Children,
 actions by or involving)
 Ordinary care of or by (See NEGLIGENCE, subhead:
 Ordinary care)

[References are to civil (CV) and criminal (CR) instruction numbers.]

CHILDREN (See also MINORS)—Cont.

- Paternity claim, exhibiting of child in . . . CV 705.09
- Permanent disabling harm to victim under age ten . . . CR 541.1426
- Safety of child, care for . . . CV 407.01
- Schools (See SCHOOLS)
- Sex offenses involving (See SEX OFFENSES)
- Sexual abuse . . . CR 519.22
- Statutory violations by . . . CV 407.07
- Stealing of child . . . CR 505.04
- Stillbirth, damages . . . CV 315.07
- Support claims (See CHILD SUPPORT)
- Tobacco products, illegal distribution of . . . CR 527.02(B)(1) *et seq.*
- Tort of child, liability of parents for . . . CV 407.19
- Under age ten, permanent disabling harm to victim . . . CR 541.1426
- Unruliness, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)

CHILD SUPPORT

- Interference with issuance or modification of support order . . . CR 519.231
- Nonsupport, claim for
 - Generally . . . CR 519.21(A); CR 519.21(B)
 - Contributing to nonsupport of dependents . . . CR 519.21(C)

CIGARETTES, ILLEGAL DISTRIBUTION OF (See TOBACCO PRODUCTS, ILLEGAL DISTRIBUTION OF)

CIRCUMSTANTIAL EVIDENCE

- Defined . . . CR 409.01; CV 305.01

CIVIL CONSPIRACY

- Plaintiff's claim . . . CV 443.01

CIVIL RIGHTS

- Deprivation of . . . CV 713.01
- Interference with . . . CR 521.45

CIVIL RULES

- General instructions . . . CV 101.45

CLEAR AND CONVINCING EVIDENCE

- Generally . . . CV 303.07

CLOSING INSTRUCTIONS

- Alternate jurors . . . CR 425.39; CV 317.05
- Common closing remarks . . . CR 425.35; CV 317.03
- Final instructions (See FINAL INSTRUCTIONS)
- Introductory instructions . . . CV 317.01
- Sample final instructions . . . CV 207.39

CLOSING REMARKS

- Final instructions, sample . . . CR 207.31; CV 207.35

COERCION

- Generally . . . CR 505.12

COIN MACHINES, TAMPERING WITH

- Generally . . . CR 511.32

COMA OR BLACKOUT

- Acts committed while in . . . CR 417.07

COMA OR BLACKOUT—Cont.

- Negligence, excuse for
 - Generally . . . CV 401.21
 - Affirmative defenses for automobile negligence . . . CV 411.73

COMMISSIONS AND FEES

- Broker's commission, recovery of . . . CV 605.01

COMMON CARRIERS, NEGLIGENCE BY

- Generally . . . CV 401.35
- Highest degree of care . . . CV 401.37

COMMON LAW MARRIAGE

- Determination of . . . CV 701.15

COMPANION ANIMALS

- Cruelty to . . . CR 559.131

COMPARATIVE FAULT

- Interrogatories on future damages
 - One defendant
 - Not required . . . CV 403.01
 - Required . . . CV 403.05
 - Two or more defendants
 - Not required . . . CV 403.03
 - Required . . . CV 403.07

COMPARATIVE NEGLIGENCE

- Children, duty of parents in actions by or involving . . . CV 407.15
- Comparative fault (See COMPARATIVE FAULT)
- Conclusions
 - One plaintiff, one defendant . . . CV 406.01
 - Two or more defendants
 - Without plaintiff negligence . . . CV 406.03
 - With plaintiff negligence . . . CV 406.05
- Fault, comparative (See COMPARATIVE FAULT)
- Interrogatories on future damages
 - Comparative fault (See COMPARATIVE FAULT)
 - Failure to answer; instructions during deliberations . . . CV 319.07
- One defendant
 - Not required . . . CV 403.01
 - Required . . . CV 403.05
- Two or more defendants
 - Not required . . . CV 403.03
 - Required . . . CV 315.11; CV 403.07
- Issues regarding negligence, presentation of (See NEGLIGENCE, subhead: Issues, presentation of)
- Last clear chance as element . . . CV 403.13
- One defendant
 - Generally . . . CV 403.01
 - Conclusions . . . CV 406.01
 - Interrogatories (See subhead: Interrogatories on future damages)
- Proximate cause (See PROXIMATE CAUSE)
- Rescue or attempted rescue of another . . . CV 403.11
- Risk, assumption of . . . CV 403.09
- Two or more defendants
 - Generally . . . CV 403.03
 - Conclusions
 - Without plaintiff negligence . . . CV 406.03
 - With plaintiff negligence . . . CV 406.05

[References are to civil (CV) and criminal (CR) instruction numbers.]

COMPARATIVE NEGLIGENCE—Cont.

Two or more defendants—Cont.

Interrogatories (See subhead: Interrogatories on future damages)

COMPETENCE OF WITNESSES

Paternity claim, parties in . . . CV 705.11

Questioned competence of; instructions during trial . . . CV 309.21

COMPLAINTS, FILING OF FALSE (See FALSE COMPLAINTS, FILING OF)**COMPLICITY**

Generally . . . CR 523.03

Specifications

Generally . . . CR 541.01

Firearms

One year . . . CR 541.141

Three year . . . CR 541.145

COMPOUNDING OF CRIME

Generally . . . CR 521.21

COMPUTER USE

Denial of access . . . CR 513.81

Unauthorized use

Generally . . . CR 513.04

Failure to report . . . CR 521.22(A)

CONCEALMENT OF ASSETS

Generally . . . CV 447.01

CONCLUDING INSTRUCTIONS

Generally . . . CR 101.59; CR 425.01; CV 101.59

Affirmative defense . . . CR 425.03; CV 313.05

Negligence conclusions (See NEGLIGENCE, subhead: Conclusions)

One plaintiff, one defendant

Generally . . . CV 313.01

Negligence conclusions . . . CV 406.01

Two or more defendants

Generally . . . CV 313.03

Negligence conclusions

Without plaintiff negligence . . . CV 406.03

With plaintiff negligence . . . CV 406.05

CONFIDENTIAL INFORMATION

Disclosure of . . . CR 521.24

CONSCIOUSNESS OF GUILT

Evidence of . . . CR 409.13

CONSENT AGREEMENTS

Violation of . . . CR 519.27

CONSORTIUM, LOSS OF

Damages . . . CV 315.03

CONSPIRACY

Generally . . . CR 523.01

Civil conspiracy; plaintiff's claim . . . CV 443.01

RICO offenses (See RICO OFFENSES, subhead: Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt)

CONSUMER SALES PRACTICES ACT

Generally . . . CV 521.01

Rebates or discounts, illegal . . . CV 521.03

Title insurance agents, violations by . . . CV 525.21

CONTAMINATION

Blood, selling or donation of contaminated . . . CR 527.13

False report, spreading of . . . CR 527.24(C)

Human consumption items, of . . . CR 527.24(B)

CONTRACTS

Acceptance . . . CV 501.05

Accord and satisfaction as affirmative defense . . . CV 501.25

Affirmative defenses

Accord and satisfaction . . . CV 501.25

Duress . . . CV 501.29

Frustration of purpose . . . CV 501.15

Impracticability

Generally . . . CV 501.17

Government action, due to . . . CV 501.19

Mistake of fact

Mutual . . . CV 501.11

Unilateral . . . CV 501.13

Payment . . . CV 501.23

Prevention of performance . . . CV 501.21

Satisfaction . . . CV 501.23; CV 501.25

Waiver . . . CV 501.27

Agency liability

Generally . . . CV 423.01

Independent contractors (See AGENCY LIABILITY, subhead: Independent contractors)

Bailments (See BAILMENTS)

Damages

Expectation . . . CV 501.33

Reliance . . . CV 501.35

Defined . . . CV 501.03

Duress as affirmative defense . . . CV 501.29

Employment (See EMPLOYMENT RELATIONS, subhead: Contracts)

Express contracts . . . CV 501.03

Formation of contract . . . CV 501.03

Frustration of purpose as affirmative defense . . . CV 501.15

Government action, impracticability due to; affirmative defense . . . CV 501.19

Implied contract . . . CV 501.03

Impracticability as affirmative defense

Generally . . . CV 501.17

Government action, impracticability due to . . . CV 501.19

Intent of parties . . . CV 501.07

Interference with contractual relationship, tortious . . . CV 453.03

Interpretation of contract . . . CV 501.07

Mistake of fact

Affirmative defense, as

Mutual mistake . . . CV 501.11

Unilateral mistake . . . CV 501.13

Mistake/implied in fact contract . . . CV 501.39

Modification of contract . . . CV 501.09

Offer and acceptance . . . CV 501.05

[References are to civil (CV) and criminal (CR) instruction numbers.]

CONTRACTS—Cont.

- Payment as affirmative defense . . . CV 501.23
- Plaintiff, claim by . . . CV 501.01
- Prevention of performance as affirmative defense . . . CV 501.21
- Promissory estoppel . . . CV 501.31
- Public contract, unlawful interest in . . . CR 521.42
- Quantum meruit . . . CV 501.39
- Rescission and restitution . . . CV 501.37
- Sale of goods (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))
- Satisfaction as affirmative defense . . . CV 501.23; CV 501.25
- Suretyship contracts, strict construction of . . . CV 513.03
- Tortious interference with contractual relationship . . . CV 453.03
- Uniform Commercial Code, contracts for sale of goods under (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))
- Unjust enrichment, recovery for . . . CV 501.39
- Waiver as affirmative defense . . . CV 501.27

CONTROLLED SUBSTANCES OFFENSES (See DRUG OFFENSES)

CONVERSION

- Abandonment, defense of . . . CV 625.07
- Accrual of action . . . CV 625.03
- Defined . . . CV 625.01
- Mortgagee, by . . . CV 625.05

CORPSE, ABUSE OF

- Generally . . . CR 527.01

CORRUPT ACTIVITIES

- Engaging in pattern of . . . CR 523.32(A)(1); CR 523.32(A)(2); CR 523.32(A)(3)
- RICO (See RICO OFFENSES)

COUNTERCLAIM

- Submission of . . . CV 311.07

COUNTERFEITING

- Controlled substances . . . CR 525.37
- Trademarks . . . CR 513.34
- Vehicle identification numbers . . . CR 749.62(C)

CREDIBILITY

- Generally . . . CR 409.05; CV 305.05
- Sample final instructions . . . CR 207.05; CV 207.11

CREDIT CARDS

- Misuse of . . . CR 513.21
- Theft, value . . . CR 425.23

CREDITORS

- Defrauding of . . . CR 513.45
- Extortionate extension of credit . . . CR 505.22

CRIMINAL RECORD INFORMATION

- Misuse of . . . CR 527.22

CRIMINAL RULES

- General instructions . . . CR 101.45

CUSTODY, INTERFERENCE WITH

- Generally . . . CR 519.23(A)
- Removal of child . . . CR 519.23(B)
- Stealing of child . . . CR 505.04

D

DAMAGES

- Acceleration or aggravation of condition . . . CV 315.15
- Alcoholic beverages, service of
 - Generally . . . CV 413.11
 - Civil Damages Act, under . . . CV 413.07
- Annuity cost in claim for future damages . . . CV 315.13
- Attorneys' fees, reasonable . . . CV 315.39
- Automobile damage or loss . . . CV 315.19
- Broker's liability for . . . CV 605.09
- Child, damages for (See CHILDREN, subhead: Damages for child)
- Comparative negligence actions, interrogatories in (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
- Compensatory damages
 - Nuisance . . . CV 621.13
 - Wrongful death . . . CV 315.49
- Consortium, loss of . . . CV 315.03
- Contract claims
 - Expectation damages . . . CV 501.33
 - Reliance damages . . . CV 501.35
- Criminal act, civil remedy for personal injuries resulting from . . . CV 455.01
- Defamation . . . CV 431.07
- Discrimination, employment . . . CV 533.25
- Earnings, loss of
 - Generally . . . CV 315.17
 - Minor, recovery by . . . CV 407.21
- Eminent domain actions, loss of value of remaining land in . . . CV 609.09
- Fraud . . . CV 449.15
- Future damages
 - Income tax considerations . . . CV 315.45
 - Interrogatories in comparative negligence actions (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
 - Present value of . . . CV 315.45
 - Tort actions based on claim for (See subhead: Tort actions based on claim for future damages)
- Governmental liability . . . CV 425.15
- Guarantees, actions involving . . . CV 509.07
- Income tax considerations on future damages . . . CV 315.45
- Intentional tort claims; allocation of damages, multiple defendants, interrogatories required
 - Generally . . . CV 429.09
 - Other tortious conduct claims, with . . . CV 429.11
- Interrogatories
 - Comparative negligence actions, in (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
 - Intentional tort claims; allocation of damages, multiple defendants, interrogatories required
 - Generally . . . CV 429.09

[References are to civil (CV) and criminal (CR) instruction numbers.]

DAMAGES—Cont.**Interrogatories—Cont.**

Intentional tort claims; allocation of damages, multiple defendants, interrogatories required—
Cont.

Other tortious conduct claims, with . . . CV 429.11

Joinder, denial of . . . CV 315.27

Joint trial of separate claims . . . CV 315.31

Limitation on recovery . . . CV 315.27

Loss of use . . . CV 315.21

Mathematic formula for . . . CV 315.05

Medical expenses, limitation to . . . CV 315.27

Miscarriage . . . CV 315.07

Mitigation, duty of . . . CV 315.51

Mobile home park claims (See MOBILE HOME PARKS)

Mortality table, use of . . . CV 315.43

Multiple defendants

Generally . . . CV 315.33

Intentional tort claims; allocation of damages, interrogatories required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Negligence actions (See NEGLIGENCE)

Nominal damages . . . CV 315.53

Nuisance, compensatory damages for . . . CV 621.13

Personal injury

Generally . . . CV 315.01

Criminal act, civil remedies for injuries resulting from . . . CV 455.01

Final instructions sample . . . CV 207.21

Joint trial of separate claims . . . CV 315.31

Tort actions . . . CV 315.01

Personal property damage or loss

Generally . . . CV 315.19

Automobiles . . . CV 315.19

Market value, property without . . . CV 315.23

Product liability . . . CV 451.21

Punitive damages in tort actions on claims . . . CV 315.37

Quotient verdicts . . . CV 315.41

Real property, damage to . . . CV 315.35

Residential lending practices . . . CV 525.19

RICO offenses

Acquiring or maintaining interest in enterprise or real property . . . CV 445.13

Conducting or participating in affairs of enterprise . . . CV 445.07

Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25

Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19

Sale of goods, contracts for (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))

Separate claims, joint trial of . . . CV 315.31

Spouse's damages, inclusion or exclusion of . . . CV 315.27

Stillbirth . . . CV 315.07

Subrogation . . . CV 315.25

DAMAGES—Cont.

Substantial defined . . . CV 315.37

Tort actions

Business relationship, tortious interference with . . . CV 453.01

Contractual relationship, tortious interference with . . . CV 453.03

Future damages (See subhead: Tort actions based on claim for future damages)

Inheritance, tortious interference with expectancy of . . . CV 453.07

Intentional tort claims; allocation of damages, multiple defendants, interrogatories required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Personal injury . . . CV 315.01

Punitive damages on claims . . . CV 315.37

Tort actions based on claim for future damages

Annuity, cost of . . . CV 315.13

One defendant; periodic payments in non-comparative negligence tort actions . . . CV 315.09

Two defendants with interrogatories; periodic payments in comparative negligence tort actions . . . CV 315.11

Wrongful death, compensatory damages for . . . CV 315.49

DAMAGING OR ENDANGERING

Criminal . . . CR 509.06

DEADLOCKED JURY

Generally . . . CR 429.09; CV 319.07

DEATH

Knowledge of, failure to report . . . CR 521.22(C); CR 521.22(D)

Wrongful (See WRONGFUL DEATH)

DEFAMATION

Business relationship, tortious interference with . . . CV 453.01

Contractual relationship, tortious interference with . . . CV 453.03

Damages . . . CV 431.07

Employment relations, tortious interference with . . . CV 453.05

Private figures

Labor dispute involved or qualified privilege applying . . . CV 431.05

Public and private issues, involving . . . CV 431.03

Public figures . . . CV 431.01

Public officials . . . CV 431.01

DEFENDANTS (GENERALLY)

Believe, reasonable cause to . . . CR 417.37

Comparative negligence claims (See COMPARATIVE NEGLIGENCE, subheads: One defendant; Two or more defendants)

Multiple defendants

General instruction . . . CV 311.03

Concluding instructions . . . CR 425.05

Damage claims . . . CV 315.33

[References are to civil (CV) and criminal (CR) instruction numbers.]

DEFENDANTS (GENERALLY)—Cont.

Multiple defendants—Cont.

Intentional tort claims; allocation of damages, interrogatories required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Weighing of evidence from . . . CR 409.15

Reasonable cause to believe . . . CR 417.37

Self-representation . . . CR 401.03

Testimony, refusal or inability to give . . . CR 207.15; CR 409.07

DEFENSES

Accident . . . CR 421.01

Affirmative defenses

Generally . . . CR 417.27

Automobile negligence . . . CV 411.73

Burden of proof (See BURDEN OF PROOF)

Concluding instructions . . . CR 425.03; CV 313.05

Contract claims (See CONTRACTS, subhead: Affirmative defenses)

Discrimination in employment

Generally . . . CV 533.21

Business necessity . . . CV 533.09

Eviction from mobile home park . . . CV 613.11

Guarantees, actions involving . . . CV 509.05

Product liability . . . CV 451.19

Sample final instructions . . . CR 207.19

Alibi . . . CR 421.03

Anger as defense to homicide . . . CR 421.11

Animals, liability for . . . CV 409.03

Automobile negligence, affirmative defenses for . . . CV 411.73

Battered person syndrome . . . CR 417.43

Character . . . CR 421.05

Concealment of assets . . . CV 447.01

Contract claims, affirmative defenses in (See CONTRACTS, subhead: Affirmative defenses)

Conversion, abandonment as defense to . . . CV 625.07

Defense of another, tests for reasonable . . . CR 421.23

Discrimination in employment; affirmative defenses

Generally . . . CV 533.21

Business necessity . . . CV 533.09

Drug use as defense to homicide . . . CR 421.11

Duress

Generally . . . CR 421.15

Affirmative defense in contract claim, as . . . CV 501.29

Embezzlement . . . CV 447.01

Entrapment, unlawful . . . CR 421.17

Eviction from mobile home park, affirmative defense to . . . CV 613.11

Fraud in real estate sales; *caveat emptor* defense . . . CV 449.13

Governmental liability . . . CV 425.11

Guarantees, actions involving . . . CV 509.05

Insanity defense (See INSANITY DEFENSE)

Insurer's defense of exposure to unnecessary danger . . . CV 709.37

Intoxication (See INTOXICATION)

DEFENSES—Cont.

Malicious prosecution

Civil prosecution, malicious . . . CV 439.01

Criminal prosecution, malicious . . . CV 439.03

Necessity . . . CR 421.13

Negligence (See NEGLIGENCE)

Other causes of event . . . CR 417.25

Product liability, affirmative defenses to . . . CV 451.19

Reputation . . . CR 421.05

Self-defense

Battered person syndrome . . . CR 417.43

Bodily harm, against danger of . . . CR 421.19; CR 421.21; CR 421.211

Deadly force

Defined . . . CR 421.21; CR 421.211

Use of . . . CR 421.21; CR 421.211

Death or great bodily harm, against danger of . . . CR 421.19; CR 421.21; CR 421.211

Defense of another . . . CR 421.191

Dwelling defined . . . CR 421.19; CR 421.21

Harm to person, against danger of . . . CR 421.19

Immediate family defined . . . CR 421.19; CR 421.21

Non-deadly force

Defined . . . CR 421.19

Use of . . . CR 421.191

Reasonable grounds and honest belief test . . . CR 421.21; CR 421.211

Reasonableness tests . . . CR 421.23

Residence defined . . . CR 421.19; CR 421.21

Substantial risk defined . . . CR 421.19; CR 421.21; CR 421.191; CR 421.211

Tests for reasonableness . . . CR 421.23

Vehicle defined . . . CR 421.19; CR 421.21

Wrongful conveyance . . . CV 447.01

Wrongful possession . . . CV 447.01

DELIBERATIONS, INSTRUCTIONS DURING

Generally . . . CR 101.83; CV 101.83

Deadlocked jury . . . CR 429.09; CV 319.07

Discussion of case during interruptions, admonition against . . . CV 319.01

Interruptions . . . CR 429.01

Law, regarding . . . CR 429.07

Mistrial declared . . . CV 319.07

Questions by jury . . . CR 429.05

Sample final instruction . . . CR 207.33; CV 207.33

Sequestration . . . CR 429.03

Verdict, possibility of or failure to reach . . . CR 429.09; CR 429.11; CV 319.07

DELIVERY OF INSTRUCTIONS (GENERALLY)

Generally . . . CR 405.01

Effective delivery

Generally . . . CR 101.09; CV 101.09

General instructions . . . CR 101.79; CV 101.79

Test for . . . CR 101.11; CV 101.11

Time of delivery

Generally . . . CR 101.07; CV 101.07

Stages of trial, throughout . . . CR 101.03; CV 101.03

[References are to civil (CV) and criminal (CR) instruction numbers.]

DEMONSTRATIONS

Instructions prior to conducting of . . . CR 401.17; CV 309.17

DEPOSITIONS

Generally . . . CR 409.27; CV 309.07

DEPRIVING OF PROPERTY

Defined . . . CR 417.13

DERELICTION OF DUTY

Detention facilities, officers in . . . CR 521.44(C)

Judicial officers . . . CR 521.44(B)

Law enforcement officers . . . CR 521.44(A); CR 521.44(B)

Ministerial officers . . . CR 521.44(B)

Public officials . . . CR 521.44(D)

Public servants . . . CR 521.44(E)

DESECRATION

Generally . . . CR 527.11

DETAINEES (See PRISONS, PRISONERS AND DE-TAINEES)**DIRECT EVIDENCE**

Defined . . . CR 409.01; CV 305.01

DISABLED PERSONS AND DISABILITIES

Assistance dog

Assault of . . . CR 521.321

Theft of . . . CR 513.02

Blind persons, failure to yield right of way to . . . CV 411.63

Child under age ten, permanent disabling harm to . . . CR 541.1426

Discrimination, employment

Generally . . . CV 533.11

Reasonable accommodation . . . CV 533.13

Identity fraud . . . CR 513.49

Insurance claims for total disability (See INSURANCE, subhead: Disability, total)

Negligence and ordinary care . . . CV 401.09

Theft or fraud, value and special property . . . CR 425.23; CR 513.02

DISCHARGE OF JURY

Generally . . . CR 101.87; CV 101.87

Agreement, without . . . CR 429.11

Overnight adjournment . . . CV 317.09

Rights after discharge . . . CR 429.13

DISCRIMINATION, EMPLOYMENT

Generally . . . CV 533.01

Adverse impact claims . . . CV 533.07

Business necessity defense . . . CV 533.09

Circumstantial evidence; disparate treatment claims . . . CV 533.03

Constructive discharge . . . CV 533.23

Damages . . . CV 533.25

Defenses, affirmative

Generally . . . CV 533.21

Business necessity . . . CV 533.09

Direct evidence; disparate treatment claims . . . CV 533.05

DISCRIMINATION, EMPLOYMENT—Cont.

Disability discrimination

Generally . . . CV 533.11

Reasonable accommodation . . . CV 533.13

Disparate impact claims . . . CV 533.07

Disparate treatment claims

Direct evidence . . . CV 533.05

Indirect evidence . . . CV 533.03

Hostile work environment; sexual harassment . . . CV 533.17

Reasonable accommodation . . . CV 533.13

Retaliation . . . CV 533.19

Sexual harassment

Hostile work environment . . . CV 533.17

Loss of tangible job benefit . . . CV 533.15

DISORDERLY CONDUCT

After 3/23/19 . . . CR 517.11(A); CR 517.11(B)

After 1/25/02 but before 3/23/19 . . . CR 517.11(A); CR 517.11(B)

Riot (See RIOT)

DISPUTED ISSUES

General instructions . . . CR 101.53; CV 101.53

DOCUMENTS

Drug documents, illegal processing of . . . CR 525.23

Residential lending, failure to return original documents related to . . . CV 525.11

Unlawful conduct with respect to documents . . . CR 505.33

DOGS

Assistance dog

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Failure to confine . . . CR 555.22

Fighting . . . CR 559.03

Liability for . . . CV 409.01

Police dog

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Service dog, theft of . . . CR 513.02

Theft of . . . CR 513.02

DOMESTIC VIOLENCE

Generally . . . CR 519.25

Sample final instructions . . . CR 207.17

DRIVER'S LICENSE OFFENSES

Blank driver's license form, theft, value . . . CR 425.23

Expired license, operation of vehicle with . . . CR 710.12(A)(1)(b)

Financial responsibility suspension, operation of vehicle while under . . . CR 710.16

Motorcycle operated without valid license . . . CR 710.12(A)(2)

OVI suspension, operation of vehicle under . . . CR 710.14

Reinstatement of license after suspension, operation of vehicle without . . . CR 710.21

Restricted license, operation of vehicle in violation of . . . CR 710.11(B)

[References are to civil (CV) and criminal (CR) instruction numbers.]

DRIVER'S LICENSE OFFENSES—Cont.

- Suspended license, operation of vehicle under
 - Generally . . . CR 710.11(A)
 - Financial responsibility suspension . . . CR 710.16
 - OVI suspension . . . CR 710.14
 - Reinstatement of license after suspension, operation of vehicle without . . . CR 710.21
 - Twelve-point suspension . . . CR 710.037
- Twelve-point suspension, operation of vehicle under . . . CR 710.037
- Valid license, operation of vehicle without
 - Expired license . . . CR 710.12(A)(1)(b)
 - Motorcycle . . . CR 710.12(A)(2)
 - No license ever issued . . . CR 710.12(A)(1)(a)

DRUGGISTS

- Care, standard of . . . CV 419.01
- Ephedrine product, unlawful or improper sale of . . . CR 525.56
- Pseudoephedrine product, unlawful or improper sale of . . . CR 525.56

DRUG OFFENSES**Abuse**

- Generally . . . CR 525.11
- Instruments, possession of . . . CR 525.12
- Intoxicants . . . CR 525.31
- Permitting . . . CR 525.13
- Aggravated possession . . . CR 525.11
- Anabolic steroids, administration or distribution of . . . CR 525.06
- Animal drugs, trafficking in . . . CR 525.09(B)
- Cocaine, possession of . . . CR 525.11
- Corrupting another . . . CR 525.02
- Counterfeit controlled substances, offenses involving . . . CR 525.37
- Deception to obtain drugs . . . CR 525.22
- Defenses based on acting under influence of drugs; homicide . . . CR 421.11
- Documents, drug; illegal processing of . . . CR 525.23
- Ephedrine product
 - Purchase of, unlawful or improper . . . CR 525.55
 - Sale of, unlawful or improper . . . CR 525.56
- Eviction of tenant for . . . CV 613.05
- Forfeiture pursuant to . . . CR 525.42
- Funding of drug or marijuana trafficking . . . CR 525.05
- Hashish, possession of . . . CR 525.11
- Heroin, possession of . . . CR 525.11
- Homicide, drug use as defense to . . . CR 421.11
- Instruments of drug abuse, possession of . . . CR 525.12
- Intoxicants
 - Abuse . . . CR 525.31
 - Trafficking . . . CR 525.32
- LSD, possession of . . . CR 525.11
- Manufacture, illegal
 - Generally . . . CR 525.04
 - Chemicals for, assembly or possession of . . . CR 525.041
- Marijuana
 - Aggravated possession . . . CR 525.11
 - Cultivation . . . CR 525.04

DRUG OFFENSES—Cont.**Marijuana—Cont.**

- Trafficking, funding of . . . CR 525.05
- Nitrous oxide, possession in motor vehicle of . . . CR 525.33
- Non-controlled substances, trafficking in . . . CR 525.09(A)
- Paraphernalia offenses . . . CR 525.14(C)
- Possession
 - Aggravated . . . CR 525.11
 - Chemicals for manufacture of drugs . . . CR 525.041
 - Defined . . . CR 417.21
 - Drug abuse instruments . . . CR 525.12
 - Nitrous oxide in motor vehicle . . . CR 525.33
- Pseudoephedrine product
 - Purchase of, unlawful or improper . . . CR 525.55
 - Sale of, unlawful or improper . . . CR 525.56
- Sale, preparation of drugs for . . . CR 525.07
- Samples, dispensing of . . . CR 525.36
- Tampering with drugs . . . CR 525.24
- Theft of dangerous drugs . . . CR 513.02
- Trafficking
 - Generally . . . CR 525.03
 - Animal drugs . . . CR 525.09(B)
 - Intoxicants . . . CR 525.32
 - Marijuana trafficking, funding of . . . CR 525.05
 - Non-controlled substances . . . CR 525.09(A)
- Traffic offenses; operation under influence of alcohol or drugs
 - Generally . . . CR 711.19
 - Physical control of vehicle while under influence . . . CR 711.194
 - Prohibited alcohol or drug concentration, operating with . . . CR 711.19(A)(1)(b)-(j)
 - Refusal to submit to chemical test . . . CR 711.19(A)(2)
- Watercraft and waterways violations
 - Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)
 - Prohibited alcohol or drug concentration, operating vessel with . . . CR 547.11(A)(2)-(6)

DURESS**Defense of**

- Generally . . . CR 421.15
- Affirmative defense in contract claim, as . . . CV 501.29

E**EASEMENTS**

- Generally . . . CV 601.09
- Eminent domain actions, treatment in . . . CV 609.13

ECONOMIC RELATIONSHIPS, INTERFERENCE WITH

- Business relationship, tortious interference with . . . CV 453.01
- Contractual relationship, tortious interference with . . . CV 453.03
- Employment relations, tortious interference with . . . CV 453.05

[References are to civil (CV) and criminal (CR) instruction numbers.]

ECONOMIC RELATIONSHIPS, INTERFERENCE WITH—Cont.

Inheritance, tortious interference with expectancy of . . . CV 453.07

EJECTMENT

Generally . . . CV 601.01

ELDERLY PERSONS

Identity fraud . . . CR 513.49

Theft or fraud, value and special property . . . CR 425.23; CR 513.02

EMANCIPATION

Defined . . . CV 407.21

Loss of earnings, ability to recover . . . CV 407.21

EMBEZZLEMENT

Generally . . . CV 447.01

EMINENT DOMAIN

Generally . . . CV 609.01

Appraisal of structures . . . CV 609.11

Compensation

Generally . . . CV 609.05

Easements . . . CV 609.13

Fixtures, valuation of . . . CV 609.15

Natural assets, valuation of . . . CV 609.17

Potential use considerations . . . CV 609.07

Special use property, valuation of . . . CV 609.19

Structures, appraisal of . . . CV 609.11

Concluding instructions . . . CV 609.21

Damages for loss of value of remaining land . . . CV 609.09

Easements, treatment of . . . CV 609.13

Fixtures, valuation of . . . CV 609.15

Natural assets, valuation of . . . CV 609.17

Potential use considerations in compensation . . . CV 609.07

Special use property, valuation of . . . CV 609.19

Structures, appraisal of . . . CV 609.11

Verdict . . . CV 323.05; CV 609.23

View of property by jury . . . CV 609.03

EMOTIONAL DISTRESS, INFLICTION OF

Intentional . . . CV 429.05

Negligent . . . CV 429.07

EMPLOYMENT RELATIONS

Contracts

Generally . . . CV 537.01

Breach of contract, employer liability for . . . CV 537.15

Promissory estoppel . . . CV 537.03

Third party, liability to . . . CV 537.05

Defamation of private figures involved in labor dispute . . . CV 431.05

Discrimination (See **DISCRIMINATION, EMPLOYMENT**)

Employee injury, disease, condition, or death; employer intentional tort . . . CV 537.09

Fair representation, union's duty of . . . CV 537.15

Hostile work environment claim; sexual harassment . . . CV 533.17

Intentional torts . . . CV 537.09

EMPLOYMENT RELATIONS—Cont.

Interference with, tortious . . . CV 453.05

Labor-management disputes . . . CV 537.13

Liability

Employees, to . . . CV 537.15

Government employees acting in proprietary function . . . CV 425.03

Third parties, to

Contract claims . . . CV 537.05

Tort claims . . . CV 537.07

Physical injuries to employees; employer intentional tort . . . CV 537.09

Sexual harassment

Hostile work environment . . . CV 533.17

Loss of tangible job benefit . . . CV 533.15

Torts

Employee injury, disease, condition, or death . . . CV 537.09

Intentional torts . . . CV 537.09

Interference with employment relations, tortious . . . CV 453.05

Physical injuries to employees . . . CV 537.09

Third parties, liability to . . . CV 537.07

Wrongful discharge as public policy tort . . . CV 537.17

Trade secrets, appropriation of . . . CV 537.11

Workers' compensation claims (See **WORKERS' COMPENSATION CLAIMS**)

Wrongful discharge as public policy tort . . . CV 537.17

ENDANGERING

Aircraft-airport operations . . . CR 509.08

Criminal . . . CR 509.06

Patients . . . CR 503.341

ENTRAPMENT

Defense of unlawful . . . CR 421.17

ERROR IN INSTRUCTIONS

Appeal, as basis for . . . CR 101.17; CV 101.17

ESCAPE

Generally . . . CR 521.34(A)(1)

Aiding of

Generally . . . CR 521.35(B)

Conveyance of item into detention facility . . . CR 521.35(A); CR 521.36

Sexually violent predator . . . CR 521.34(A)(2)

EVICITION, RESIDENTIAL

Breach of tenant obligations . . . CV 613.03

Drug activity . . . CV 613.05

Mobile home parks (See **MOBILE HOME PARKS**)

Non-payment of rent

Generally . . . CV 613.01

Mobile home park tenant . . . CV 613.13

EVIDENCE

Generally . . . CR 101.33; CV 101.33

Accomplice testimony . . . CR 409.17

Acts of witnesses, weighing of testimony on . . . CR 409.33

Audiotapes . . . CR 409.29

Battered person syndrome . . . CR 417.43

[References are to civil (CV) and criminal (CR) instruction numbers.]

EVIDENCE—Cont.

- Circumstantial evidence defined . . . CR 409.01; CV 305.01
- Civil case, results in . . . CR 405.09
- Clear and convincing . . . CV 303.07
- Consciousness of guilt . . . CR 409.13
- Credibility and tests for . . . CR 409.05; CV 305.05
- Defined . . . CR 409.01; CV 305.01
- Depositions . . . CR 409.27; CV 309.07
- Destruction of . . . CV 437.01
- Direct evidence defined . . . CR 409.01; CV 305.01
- Exclusions from
 - Generally . . . CR 409.03; CV 305.03
 - Sample final instruction . . . CV 207.09
- Exhibits . . . CR 409.25
- Expert testimony (See EXPERT WITNESSES)
- Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05
- Guilt, consciousness of . . . CR 409.13
- Interpreters and translators
 - Civil trials, in . . . CV 301.13
 - Criminal trials, in . . . CR 401.29
- Layman's opinion . . . CR 409.19; CV 309.09
- Limited purpose evidence; instructions during trial . . . CR 401.23; CV 309.05
- Multiple defendants, evidence from . . . CR 409.15
- Polygraph tests . . . CR 409.23
- Preponderance of evidence . . . CR 417.29; CV 303.05
- Presumptions . . . CR 417.33
- Prima facie evidence (See PRIMA FACIE EVIDENCE)
- Prior convictions and acts
 - Concluding instructions . . . CR 425.15
 - Trial, instructions during . . . CR 401.25; CR 409.11
- Sample instructions
 - Evidence and references, sample final instruction for . . . CV 207.07
 - Exclusion, sample final instruction for . . . CV 207.09
 - Inferences, sample final instruction for evidence and . . . CR 207.03
- Spoliation . . . CV 437.01
- Tampering with . . . CR 521.12
- Testimony (See TESTIMONY)
- Transcripts . . . CR 409.27; CV 309.07
- Translators, interpreters and
 - Civil trials, in . . . CV 301.13
 - Criminal trials, in . . . CR 401.29
- Videotapes . . . CR 409.31

EXHIBITS

- Generally . . . CR 409.25
- Sample final instructions . . . CR 207.07

EXOTIC ANIMALS

- Offenses related to . . . CR 551.13

EXPERIMENTS, TESTS OR DEMONSTRATIONS

- Instructions prior to conducting of . . . CR 401.17; CV 309.17

EXPERT WITNESSES

- Generally . . . CR 409.21; CV 309.11
- Fraud, opinions on . . . CV 449.07

EXPERT WITNESSES—Cont.

- Hypothetical questions . . . CR 409.21; CV 309.11
- Paternity claim, serological tests in . . . CV 705.07
- Polygraph examiners . . . CR 409.23
- Sample final instructions . . . CV 207.15

EXPLOSIVE DEVICES

- Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28
- Possession . . . CR 509.26
- Use, knowing or reckless . . . CR 509.27

EXTORTION

- Generally . . . CR 505.11
- Coercion . . . CR 505.12
- Credit, extortionate extension of . . . CR 505.22

EYEWITNESSES

- Credibility, weighing of . . . CR 409.05; CV 305.05

F**FAILURE TO REPORT CRIME**

- Computer, cable, or telecommunications property, unauthorized use of . . . CR 521.22(A)
- Felony . . . CR 521.22(A)
- Gunshot or stab wound . . . CR 521.22(B)

FAIR HOUSING RIGHTS

- Interference with . . . CR 527.03

FALSE ALARMS, MAKING OF

- Generally . . . CR 517.32

FALSE ARREST

- Generally . . . CV 441.01

FALSE COMPLAINTS, FILING OF

- Patient abuse and neglect, complaint of . . . CR 503.35

FALSE LIGHT

- Invasion of privacy . . . CV 433.05

FALSE REPORTS, MAKING OF

- Child abuse or neglect . . . CR 521.14
- Contamination . . . CR 527.24(C)

FALSE REPRESENTATION

- Firearm offense . . . CR 521.13
- Insurance claims . . . CV 709.17
- Removal proceeding . . . CR 521.13
- Theft offense . . . CR 521.13

FAMILY OFFENSES

- Abortion offenses (See ABORTION OFFENSES)
- Bigamy . . . CR 519.01
- Consent agreement, violation of . . . CR 519.27
- Custody, interference with (See CUSTODY, INTERFERENCE WITH)
- Delinquency or unruliness of child, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)
- Domestic violence . . . CR 519.25
- Endangerment of child . . . CR 519.22
- Protection order, violation of . . . CR 519.27

[References are to civil (CV) and criminal (CR) instruction numbers.]

FAMILY OFFENSES—Cont.

- Support orders, violation of
 - Interference with issuance or modification of order . . . CR 519.231
 - Nonsupport of dependents
 - Generally . . . CR 519.21(A); CR 519.21(B)
 - Contributing to nonsupport of dependents . . . CR 519.21(C)
- Unruliness of child, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)

FERTILIZATION

- Defined . . . CR 519.171

FINAL INSTRUCTIONS

- Generally . . . CV 317.07
- Closing remarks . . . CR 425.43
- Preliminary instructions, repetition of . . . CR 101.29; CV 101.29
- Sample instructions
 - Additional finding . . . CR 207.29
 - Affirmative defense . . . CR 207.19
 - Alternate juror . . . CR 207.41
 - Burden of proof . . . CR 207.11; CV 207.03
 - Case-specific facts and law . . . CV 207.17
 - Closing . . . CV 207.39
 - Closing remarks, common . . . CR 207.31; CV 207.35
 - Credibility . . . CR 207.05; CV 207.11
 - Defendant refusing to give testimony . . . CR 207.15
 - Deliberations, conduct during . . . CR 207.33
 - Depositions . . . CV 207.13
 - Domestic violence . . . CR 207.17
 - Evidence and inferences . . . CR 207.03
 - Evidence and references . . . CV 207.07
 - Evidence excludes . . . CV 207.09
 - Exhibits . . . CR 207.07
 - Expert witness . . . CV 207.15
 - Foreperson . . . CR 207.35
 - Income taxes . . . CV 207.31
 - Introduction . . . CR 207.01; CV 207.01
 - Mathematical formula . . . CV 207.23
 - Mitigate, duty to . . . CV 207.25
 - Mortality table . . . CV 207.29
 - Personal injury or damage . . . CV 207.21
 - Preponderance . . . CR 207.21; CV 207.05
 - Present value of future damage . . . CV 207.31
 - Prior convictions . . . CR 207.09
 - Proximate cause . . . CV 207.19
 - Questions by jury . . . CR 207.37; CV 207.37
 - Quotient verdict . . . CV 207.27
 - Reasonable doubt . . . CR 207.13
 - Reasonableness . . . CR 207.25
 - Testimony, defendant refusing to give . . . CR 207.15
 - Unanimous verdict . . . CR 207.39
 - Verdict . . . CR 207.27
- Special requests . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75

FIRE

- Accelerant to initiate or increase growth or spread of fire, use of . . . CR 541.1425
- Insurance (See INSURANCE, subhead: Fire, loss by)

FIRE AND POLICE PERSONNEL

- Acts of police, weighing of testimony on . . . CR 409.33
- Aggravated vehicular homicide specification, peace officer as victim of . . . CR 541.1414
- Dereliction of duty by law enforcement officers . . . CR 521.44(A); CR 521.44(B)
- Discharge of firearm at peace officer or correction officer specification . . . CR 541.1412
- Failure to obey order of police officer
 - Generally . . . CR 521.331
 - Traffic offenses . . . CV 411.03
- Impersonation of officer (See IMPERSONATION OF OFFICER)
- Justice and public administration, offenses against (See JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST, subhead: Police officers, involving)
- Police dog or horse
 - Assaulting . . . CR 521.321
 - Theft . . . CR 513.02
- Premises liability, action for . . . CV 617.07
- Specifications
 - Aggravated vehicular homicide, peace officer as victim of . . . CR 541.1414
 - Discharge of firearm at peace officer or correction officer . . . CR 541.1412

FIREARMS

- Career criminal, use of firearm by . . . CR 523.132
- Concealed handgun license, falsification of or possession revoked or suspended . . . CR 523.1211
- Defaced firearm
 - Generally . . . CR 523.201(A)(2)
 - Identification marks . . . CR 523.201(A)(1)
- Defined . . . CR 417.41
- Discharge of firearm at peace officer or correction officer specification . . . CR 541.1412
- Displayed, brandished or indicated possession of or used firearm specification (three year) . . . CR 541.145
- Falsification to purchase firearm or obtain concealed-handgun license . . . CR 521.13
- Gunshot wound, failure to report . . . CR 521.22(B)
- Habitation, discharging at or into . . . CR 523.161
- Liquor permit premises, illegal possession in . . . CR 523.121
- Minors, possession by
 - Furnishing to minors . . . CR 523.21
 - Underage purchase . . . CR 523.211(B)
- Motor vehicle, improper handling in . . . CR 523.16
- Prohibited premises, discharging on or near . . . CR 523.162
- Robbery with deadly weapon . . . CR 511.02
- School premises, on or near (See WEAPONS, DANGEROUS, subhead: School premises, firearms, weapons or ordnance on or near)

[References are to civil (CV) and criminal (CR) instruction numbers.]

FIREARMS—Cont.

Specifications

Complicity

One year . . . CR 541.141

Three year . . . CR 541.145

Discharge of firearm at peace officer or correction officer . . . CR 541.1412

Displayed, brandished or indicated possession of or used firearm (three year) . . . CR 541.145

One year . . . CR 541.141

Physical harm, deadly weapons and . . . CR 425.21

Three year . . . CR 541.145

Theft of . . . CR 513.02

Underage purchase . . . CR 523.211(B)

Violent career criminal, use of firearm by . . . CR 523.132

FLAG BURNING

Generally . . . CR 527.11

FOOD, SALE OF

Adulterated food . . . CV 450.01

FOOD STAMP FRAUD

Illegal use . . . CR 513.46(B); CR 513.46(C)

Trafficking . . . CR 513.46(A)

WIC program benefits, illegal use of . . . CR 513.46(B); CR 513.46(C)

FORCE

Defined . . . CR 521.04

FORFEITURE

Diminishing or interfering with forfeitable property . . . CR 581.07

Drug offense conviction, pursuant to . . . CR 525.42

Gang activity, participation in . . . CR 523.44

FORGERY

Generally . . . CR 513.31(A)

Identification cards . . . CR 513.31(B)

FRAUD

Generally . . . CV 449.01

Bad checks, passing of . . . CR 513.11

Concluding instructions . . . CV 449.17

Credit cards, misuse of . . . CR 513.21

Creditors, defrauding of . . . CR 513.45

Damages . . . CV 449.15

Defense of *caveat emptor* in real estate sales . . . CV 449.13

Defined . . . CV 449.01

Disclosure by person with duty to speak . . . CV 449.11

Elements . . . CV 449.03

Expert testimony on . . . CV 449.07

Food stamps, involving (See **FOOD STAMP FRAUD**)

Forgery

Generally . . . CR 513.31(A)

Identification cards . . . CR 513.31(B)

Fraudulent purpose . . . CR 417.03

Hostelry, defrauding of . . . CR 513.41

Identity fraud . . . CR 513.49

Impersonation of officer (See **IMPERSONATION OF OFFICER**)

FRAUD—Cont.

Insurance fraud

Generally . . . CR 513.47

Agent, by . . . CV 709.55

Investigation and inspection, duty of . . . CV 449.09

Livery, defrauding of . . . CR 513.41

Medicaid fraud

Generally . . . CR 513.40

Medicaid eligibility fraud . . . CR 513.401

Value . . . CR 425.23

Non-fraudulent types of representations . . . CV 449.05

Real estate sales, *caveat emptor* in . . . CV 449.13

Records tampering . . . CR 513.42

Securing of writings by deception . . . CR 513.43

Securities claims

Common law claims for relief . . . CV 541.09

Sales fraud, liability of seller for . . . CV 541.01

Simulation, criminal . . . CR 513.32

Slugs, making or using . . . CR 513.33

Special property, value and . . . CR 425.23

Telecommunications fraud . . . CR 513.05

Tortious interference with expectancy of inheritance, as . . . CV 453.07

Trademark counterfeiting . . . CR 513.34

Value and special property . . . CR 425.23

Will contests . . . CV 633.07

Worker's compensation

Generally . . . CR 513.48

Value . . . CR 425.23

FUNCTIONALLY IMPAIRED PERSONS

Failure to provide for . . . CR 503.16

G**GAMBLING**

Generally . . . CR 515.02

Bingo games

Amusement (legal) games

Prohibited games, conducting of . . . CR 515.12

Prohibited operators . . . CR 515.11

Record violations . . . CR 515.10(A); CR 515.10(C)

Rules violations . . . CR 515.09

Instant bingo conduct, illegal

Generally . . . CR 515.091

Owner or lessor, by . . . CR 515.094

Veteran's organization, fraternal organization or sporting organization, by . . . CR 515.13

Non-amusement (illegal) games . . . CR 515.07; CR 515.12

Operating as distributor, illegally . . . CR 515.081

Operating as manufacturer, illegally . . . CR 515.082

Prohibited games (for amusement only) . . . CR 515.12

Raffle conduct, illegal . . . CR 515.092

Casino-related crimes . . . CR 515.15

Cheating

Before July 1, 1996 . . . CR 515.05

On or after July 1, 1996 . . . CR 515.05(A)

Game of chance defined . . . CR 515.07

Gaming, public . . . CR 515.04

[References are to civil (CV) and criminal (CR) instruction numbers.]

GAMBLING—Cont.

House of gambling, operation of . . . CR 515.03
 Raffle conduct, illegal . . . CR 515.092
 Record violations in legal games . . . CR 515.10(A);
 CR 515.10(C); CR 515.10(I)
 Scheme of chance defined . . . CR 515.07
 Skill-based amusement machine prohibited conduct
 . . . CR 515.06
 Sporting events, corruption of
 Before July 1, 1996 . . . CR 515.06
 On or after July 1, 1996 . . . CR 515.05(B)

GAMING (See also GAMBLING)

Public gaming . . . CR 515.04
 Raffle, illegal conduct of . . . CR 515.092

GANG OFFENSES

Participation in criminal gang
 Generally . . . CR 523.42
 Forfeiture for . . . CR 523.44
 Specification . . . CR 541.142

GASOLINE, FAILURE TO MAKE FULL PAYMENT

Theft or fraud, value and special property . . . CR 513.02

GENERAL INSTRUCTIONS

Generally . . . CR 101.47; CR 405.03; CV 101.47
 Advisory instructions . . . CR 101.57; CV 101.57
 Brevity, importance of . . . CR 101.73; CV 101.73
 Burden of proof . . . CR 405.05; CV 303.03
 Cautionary instructions . . . CR 101.57; CV 101.57
 Civil case, results in . . . CR 405.09
 Civil Rules . . . CV 101.45
 Completeness and accuracy, necessity for . . . CR 101.69; CV 101.69
 Concluding instructions . . . CR 101.59; CR 425.01; CV 101.59
 Criminal Rules . . . CR 101.45
 Defined . . . CR 101.47; CV 101.47
 Delivery . . . CR 101.79; CR 405.01; CV 101.79
 Disputed issues . . . CR 101.53; CV 101.53
 Guidelines for . . . CR 101.65 *et seq.*; CV 101.65 *et seq.*
 Impartiality and fairness, necessity for . . . CR 101.77; CV 101.77
 Law, explanation of . . . CR 101.55; CV 101.55
 Legal terms and expressions, defining . . . CR 101.65; CV 101.65
 Logical sequence, importance of . . . CR 101.67; CV 101.67
 Objections after . . . CR 101.63; CV 101.63
 Objectivity, necessity for . . . CR 101.77; CV 101.77
 Ordinary and understandable language, use of . . . CR 101.71; CR 101.81; CV 101.71; CV 101.81
 Pertinence of . . . CR 101.69; CV 101.69
 Reasonable doubt . . . CR 405.07
 Repetition, importance of . . . CR 101.73; CV 101.73
 Requests after . . . CR 101.63; CV 101.63
 Special requests . . . CR 101.75; CV 101.75
 Tailoring to individual case . . . CR 101.75; CV 101.75
 Undisputed facts . . . CR 101.51; CV 101.51

GENERAL INSTRUCTIONS—Cont.

Undisputed issues . . . CR 101.49; CV 101.49
 Verdict forms and instructions . . . CR 101.59; CR 425.33; CV 101.59
 Written instructions . . . CR 101.61; CV 101.61

GIFTS

Condition of return, gift upon . . . CV 637.11
 Defined . . . CV 637.01
 Elements of valid gift . . . CV 637.05
 Mortgage or money represented by mortgage, gift of . . . CV 637.09
 Presumption of acceptance . . . CV 637.03
 Proof required . . . CV 637.07

GOVERNMENTAL LIABILITY

Buildings or grounds, failure to maintain . . . CV 425.07
 Damages . . . CV 425.15
 Defenses . . . CV 425.11
 Employees acting in proprietary function, negligence of . . . CV 425.03
 Ice and snow accumulations, failure to remove . . . CV 425.05
 Immunity for discretionary functions . . . CV 425.11
 Motor vehicle, negligent operation of . . . CV 425.01
 Negligence
 Buildings or grounds, failure to maintain . . . CV 425.07
 Employees acting in proprietary function . . . CV 425.03
 Ice and snow accumulations, failure to remove . . . CV 425.05
 Motor vehicle, operation of . . . CV 425.01
 Roads and bridges, maintenance of . . . CV 425.05
 Roads and bridges, improper maintenance of . . . CV 425.05
 Statute of limitations . . . CV 425.13
 Statutes, under specific . . . CV 425.09

GRAND JURIES

Instructions to . . . CR 301.07
 Oath
 Court reporters . . . CR 301.05
 Jurors . . . CR 301.03
 Qualification . . . CR 301.01

GUARANTEES

Affirmative defenses . . . CV 509.05
 Damages . . . CV 509.07
 Defined . . . CV 509.01
 Liability of parties . . . CV 509.03

GUILT

Evidence of consciousness of . . . CR 409.13

H**HARASSMENT**

Hunters, of . . . CR 551.07
 Inmate, by . . . CR 521.38
 Sexual harassment, employment discrimination claims involving
 Hostile work environment . . . CV 533.17

[References are to civil (CV) and criminal (CR) instruction numbers.]

HARASSMENT—Cont.

Sexual harassment, employment discrimination claims involving—Cont.

Loss of tangible job benefit . . . CV 533.15
Telecommunications, via . . . CR 517.21(A); CR 517.21(B)

HAZING

Generally . . . CR 503.31

HEIRS

Determination of . . . CV 701.15

HOMICIDE

Anger defense . . . CR 421.11
Drugs, while under influence of; defense . . . CR 421.11
Intoxication defense . . . CR 421.11
Manslaughter (See MANSLAUGHTER)
Murder (See MURDER)
Negligent . . . CR 503.05
Pregnancy, unlawful termination of (See PREGNANCY, UNLAWFUL TERMINATION OF)
Reckless . . . CR 503.041
Vehicular (See VEHICULAR HOMICIDE)

HOSPITALS

Medical negligence claim against . . . CV 417.15

HOTELS (See INNKEEPERS)**HUMAN TRAFFICKING**

Generally . . . CR 505.32; CR 541.1422

HUNTING OFFENSES (See WILDLIFE VIOLATIONS)**HUSBAND AND WIFE**

Adultery, proof of . . . CV 701.05
Bigamy . . . CR 519.01
Burden of proof
Adultery . . . CV 701.05
Support claim . . . CV 701.03
Common law marriage . . . CV 701.15
Credit of husband, goods purchased on . . . CV 701.13
Damage claims, denial of joinder of . . . CV 315.27
Family offenses (See FAMILY OFFENSES)
Heirs, determination of . . . CV 701.15
Liability
Negligence of wife, liability of husband for . . . CV 701.09
Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)
Negligence of wife, liability of husband for . . . CV 701.09

HYPOTHETICAL QUESTIONS

Expert witnesses, of . . . CR 409.21; CV 309.11

I**IDENTITY FRAUD**

Generally . . . CR 513.49

IMPERSONATION OF OFFICER

Generally . . . CR 513.44; CR 521.51(B)

IMPERSONATION OF OFFICER—Cont.

Arrest or search, in . . . CR 521.51(C)
Offense, in commission of . . . CR 521.51(D); CR 521.51(E)

IMPROPER QUESTIONS

Generally . . . CV 309.23

INDEPENDENT CONTRACTORS

Agency liability . . . CV 423.07

INFECTIOUS AGENTS

Improper handling . . . CR 517.47

INFERENCES

Defined . . . CR 409.01; CV 305.01

INNKEEPERS

Defined . . . CV 415.01
Defrauding of hostelry . . . CR 513.41
Loss of guest's property, liability for
Generally . . . CV 415.01
Checkout, after . . . CV 415.05
Special arrangements . . . CV 415.03

INSANITY DEFENSE

Burden of proof . . . CR 421.29
Concluding instructions . . . CR 421.29
Defined . . . CR 421.25
Intoxication, voluntary . . . CR 421.27
Temporary insanity . . . CR 421.27
Types of . . . CR 421.27

INSTRUCTIONS (GENERALLY)

Advisory instructions . . . CR 101.57; CV 101.57
Appeal on instructions
Generally . . . CR 101.15; CV 101.15
Error and prejudice . . . CR 101.17; CV 101.17
Cautionary instructions . . . CR 101.57; CV 101.57
Concluding instructions . . . CR 101.59; CR 425.01; CV 101.59
Defined . . . CR 101.01; CV 101.01
Deliberations, during (See DELIBERATIONS, INSTRUCTIONS DURING)
Delivery (See DELIVERY OF INSTRUCTIONS (GENERALLY))
Discharge instructions (See DISCHARGE OF JURY)
Error and prejudice distinguished . . . CR 101.17; CV 101.17
Evidential instructions . . . CR 101.33; CV 101.33
Final instructions (See FINAL INSTRUCTIONS)
General instructions (See GENERAL INSTRUCTIONS)
Judge, role of . . . CR 101.05; CV 101.05
Prejudice and error distinguished . . . CR 101.17; CV 101.17
Preliminary instructions (See PRELIMINARY INSTRUCTIONS)
Record requirements . . . CR 101.13; CV 101.13
Stages of trial, during . . . CR 101.03; CV 101.03
Standard instructions . . . CR 101.19; CV 101.19
Time of delivery
Generally . . . CR 101.07; CV 101.07
Stages of trial, throughout . . . CR 101.03; CV 101.03
Trial, before . . . CR 101.25; CV 101.25

[References are to civil (CV) and criminal (CR) instruction numbers.]

INSTRUCTIONS (GENERALLY)—Cont.

Trial, during (See TRIAL, INSTRUCTIONS DURING)
Written instructions . . . CR 101.61; CV 101.61

INSURANCE

Accident

Generally . . . CV 709.27

Accidental means distinguished

Generally . . . CV 709.31

Burden of proof . . . CV 709.33

Death from

Generally . . . CV 709.29

Accidental means distinguished . . . CV 709.33

Injury, burden of proof in . . . CV 709.25

Arm, loss of . . . CV 709.57

Arson . . . CV 709.11

Automobile insurance, intoxication exclusion in policy
for . . . CV 709.39

Bad faith, refusal to pay or delay in paying claims as
. . . CV 709.65

Beneficiary, intended . . . CV 709.43

Burden of proof

Accidental injury . . . CV 709.25

Accident or disease, death from

Generally . . . CV 709.29

Accidental means distinguished . . . CV 709.33

Exempted risk defense . . . CV 709.37

False answer material . . . CV 709.51

False representation . . . CV 709.17

Limited purpose of proofs . . . CV 709.05

Loss . . . CV 709.01

Time of proof . . . CV 709.03

Unsound health . . . CV 709.45

Waiver . . . CV 709.01

Chimney fire . . . CV 709.23

Defense of exposure to unnecessary danger . . . CV
709.37

Disability, total

Defined . . . CV 709.59

Loss of arm . . . CV 709.57

Permanent, and . . . CV 709.61

Disease

Generally . . . CV 709.27

Death from . . . CV 709.29

Explosion, loss by . . . CV 709.13

Exposure to unnecessary danger

Generally . . . CV 709.35

Exempted risk, as . . . CV 709.37

False representation . . . CV 709.17

Fire, loss by

Generally . . . CV 709.13

Arson . . . CV 709.11

Chimney fire . . . CV 709.23

Proof of loss

Generally . . . CV 709.01

Limited purpose of proofs . . . CV 709.05

Total loss . . . CV 709.15

Vacant and unoccupied premises . . . CV 709.09

Fraud

Generally . . . CR 513.47

Agent, by . . . CV 709.55

Good faith in processing insurance claim, failure to act
in . . . CV 709.65

INSURANCE—Cont.

Health of insured, representations of

False answer material, burden of proving . . . CV
709.51

Good health . . . CV 709.53

Sound health . . . CV 709.47

Unsound health, burden of proving . . . CV 709.45

Insurable interest . . . CV 709.19

Intoxication exclusion in automobile policy . . . CV
709.39

Loss, proof of

Generally . . . CV 709.01

"Earliest practical moment" requirement . . . CV
709.07

Limited purpose of proofs . . . CV 709.05

Time of proof . . . CV 709.03

Sanity, presumption of . . . CV 709.49

Steamboat, on . . . CV 709.21

Supplemental actions . . . CV 709.63

Theft defined . . . CV 709.41

Title insurance agents, violations by . . . CV 525.21

Waiver, proof of . . . CV 709.01

INTENTIONAL TORT CLAIMS

Allocation of damages, multiple defendants, interrogato-
ries required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Employer intentional torts . . . CV 537.09

INTERPRETERS

Civil trials, use in . . . CV 301.13

Criminal trials, use in . . . CR 401.29

INTERROGATORIES

Generally . . . CR 101.39; CV 101.39; CV 309.07; CV
321.01

Advisory juries . . . CR 101.37; CV 101.37

Answers to, acceptance of . . . CR 101.43; CV 101.43

Failure to answer; instructions during deliberations
. . . CV 319.07

Intentional tort claims; allocation of damages, multiple
defendants

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Narrative response interrogatories . . . CR 101.41; CV
101.41

Negligence actions

Comparative fault (See COMPARATIVE FAULT,
subhead: Interrogatories on future damages)

Comparative negligence (See COMPARATIVE
NEGLIGENCE, subhead: Interrogatories on future
damages)

Medical . . . CV 417.19

Professional, non-medical . . . CV 421.07

Product liability . . . CV 451.23

Special verdicts . . . CR 101.37; CV 101.37

INTIMIDATION

Generally . . . CR 521.03

Attorney, of . . . CR 521.04

Defined . . . CR 521.04

Ethnic intimidation . . . CR 527.12

Victim, of . . . CR 521.04

[References are to civil (CV) and criminal (CR) instruction numbers.]

INTIMIDATION—Cont.

Witness, of . . . CR 521.04

INTOXICANTS

Abuse of . . . CR 525.31

Liability for service of

Generally . . . CV 413.01

Civil Damages Act, under . . . CV 413.07

Damages

Generally . . . CV 413.11

Civil Damages Act, under . . . CV 413.07

Minor, liability to . . . CV 413.13

Off-premises liability . . . CV 413.05

On-premises liability . . . CV 413.03

Social provider, of . . . CV 413.09

Trafficking in . . . CR 525.32

INTOXICATION

Defense of

Generally . . . CR 421.07

Homicide cases . . . CR 421.11

Insanity defense . . . CR 421.27

Non-homicide cases . . . CR 421.09

Purpose and . . . CR 421.09 *et seq.*

Homicide cases, defenses in . . . CR 421.11

Insanity defense, as basis for . . . CR 421.27

Insurance policy intoxication exclusion . . . CV 709.39

Negligence claim . . . CV 401.17

Purpose and . . . CR 421.09 *et seq.*

Traffic offenses (See **ALCOHOL OFFENSES**, subhead: Traffic offenses)

Watercraft and waterways violations (See **ALCOHOL OFFENSES**, subhead: Watercraft and waterways violations)

Weapons use while intoxicated . . . CR 523.15

INVOLUNTARY MANSLAUGHTER

Generally . . . CR 503.04

ISSUES, PRESENTATION OF

Generally . . . CR 413.01

Negligence (See **NEGLIGENCE**)

Paternity claims . . . CV 705.01

Robbery, aggravated; examples

Generally . . . CR 413.03

Lesser included offense, with . . . CR 413.05

Time . . . CR 413.07

Venue . . . CR 413.07

J**JOINDER**

Damage claims, denial in . . . CV 315.27

JOINT TRIAL

Damages, separate claims for . . . CV 315.31

JOINT VENTURES

Agency liability . . . CV 423.05

JUDGES (GENERALLY)

Dereliction of duty by judicial officers . . . CR 521.44(B)

Role in instructions . . . CR 101.05; CV 101.05

JURIES AND JURORS (GENERALLY)

Admonitions to jury . . . CV 301.07

Advisory juries . . . CR 101.37; CV 101.37

Alternate jurors

Closing instructions regarding . . . CR 425.39; CV 317.05

Sample final instruction . . . CR 207.41

Appreciation of service . . . CR 425.41

Deadlocked jury . . . CR 429.09; CV 319.07

Deliberations

Conduct during . . . CR 425.37

Instructions during (See **DELIBERATIONS, INSTRUCTIONS DURING**)

Discharge of jury (See **DISCHARGE OF JURY**)

Discussion of case after verdict . . . CR 425.41

Foreperson, sample final instruction for . . . CR 207.35

Grand juries (See **GRAND JURIES**)

Jury view (See subhead: Scene visits)

Notetaking by jurors . . . CR 401.19; CV 301.09

Oath

Grand jurors . . . CR 301.03

Instructions before administration of . . . CV 301.01

Officer in charge during sequestration . . . CR 429.03

Orientation of new jury . . . CR 401.07; CV 301.05

Overnight adjournment . . . CV 317.09

Paternity actions, duty in . . . CV 705.15

Qualifying of jury

Grand jury . . . CR 301.01

Trial, instructions during . . . CR 401.01; CV 301.03

Questions by jurors

Deliberations, during . . . CR 429.05

Sample final instructions . . . CR 207.37; CV 207.37

Trial, during . . . CR 401.21; CV 301.11

Recess instructions

Generally . . . CR 401.11; CV 309.13

Extended recess and separate hearings . . . CR 401.13

Overnight adjournment . . . CV 317.09

Scene visits

Generally . . . CR 401.15; CV 309.15

Eminent domain actions . . . CV 609.03

Selection (See **VOIR DIRE**)

Sequestration . . . CR 429.03

Swearing in, instructions after . . . CR 401.09

Voir dire (See **VOIR DIRE**)

JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST

Arrest, resisting . . . CR 521.33

Bribery

Generally . . . CR 521.02

Solicitation by public official, improper (See **SOLICITATION**, subhead: Compensation by public official, improper)

Burn injury, failure to report . . . CR 521.22(E)

Cable, failure to report unauthorized use of . . . CR 521.22(A)

Civil rights

Deprivation of . . . CV 713.01

Interference with . . . CR 521.45

[References are to civil (CV) and criminal (CR) instruction numbers.]

JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST—Cont.

Compounding of crime . . . CR 521.21
 Computer, cable, or telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)
 Confidential information, disclosure of . . . CR 521.24
 Death, failure to report knowledge of . . . CR 521.22(C); CR 521.22(D)
 Dereliction of duty (See DERELICTION OF DUTY)
 Escape (See ESCAPE)
 Evidence tampering . . . CR 521.12
 Failure to report crime
 Computer, cable, or telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)
 Felony . . . CR 521.22(A)
 Gunshot or stab wound . . . CR 521.22(B)
 False reports, making of
 Child abuse or neglect . . . CR 521.14
 Contamination . . . CR 527.24(C)
 Falsification
 Firearm offense . . . CR 521.13
 Insurance claims . . . CV 709.17
 Removal proceeding . . . CR 521.13
 Theft offense . . . CR 521.13
 Felony, failure to report . . . CR 521.22(A)
 Gunshot wound, failure to report . . . CR 521.22(B)
 Impersonation of officer (See IMPERSONATION OF OFFICER)
 Inmate, harassment by . . . CR 521.38
 Intimidation (See INTIMIDATION)
 Obstruction
 Justice . . . CR 521.32
 Official business . . . CR 521.31
 Official business, obstructing . . . CR 521.31
 Perjury . . . CR 521.11
 Police dog or horse, assaulting . . . CR 521.321
 Police officers, involving
 Dereliction of duty . . . CR 521.44(A); CR 521.44(B)
 Failure to comply with order or signal . . . CR 521.331; CV 411.03
 Impersonation of (See IMPERSONATION OF OFFICER)
 Public contract, unlawful interest in . . . CR 521.42
 Public employees, restrictions on present or former . . . CR 521.17
 Public officials, involving
 Dereliction of duty . . . CR 521.44(D); CR 521.44(E)
 Disruption of activities of . . . CR 521.31
 Restrictions on present or former officials . . . CR 521.17
 Solicitation of compensation by, improper (See SOLICITATION, subhead: Compensation by public official, improper)
 Retaliation . . . CR 521.05
 Sham legal process, use of . . . CR 521.52
 Stab wound, failure to report . . . CR 521.22(B)
 Telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)
 Theft in office . . . CR 521.41

JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST—Cont.

Weapons conveyed into detention facility . . . CR 521.35(A); CR 521.36
JUVENILE DELINQUENCY
 Contributing to delinquency or unruliness
 Offenses before 1/1/2002 . . . CR 519.24
 Offenses on or after 1/1/2002 . . . CR 519.24(B)(1); CR 519.24(B)(2)
 Offenses on or after 1/1/2002 but before 7/31/2003 . . . CR 519.24(A)(3)
 Offenses on or after 7/31/2003 but before 4/6/2017 . . . CR 519.24(A)(3)
 Offenses on or after 4/6/2017 . . . CR 519.24(B)(3); CR 519.24(B)(4)

K

KIDNAPPING

Generally . . . CR 505.01(A)
 Abduction . . . CR 505.02
 Child enticement, criminal . . . CR 505.05
 Child stealing . . . CR 505.04
 Special circumstances . . . CR 505.01(B)

KNOWINGLY ACTING

Defined . . . CR 417.11

L

LABOR RELATIONS (See also EMPLOYMENT RELATIONS)

Defamation of private figures involved in labor dispute . . . CV 431.05
 Fair representation, union's duty of . . . CV 537.15
 Management-labor disputes . . . CV 537.13

LANDLORD AND TENANT

Eviction, residential (See EVICTION, RESIDENTIAL)
 Mobile home parks (See MOBILE HOME PARKS)
 Premises liability
 Landlord (See PREMISES LIABILITY, subhead: Landlord liability)
 Tenant . . . CV 617.21
 Rent, eviction for non-payment of
 Generally . . . CV 613.01
 Mobile home park tenant . . . CV 613.13
 Security deposit, return of
 Generally . . . CV 613.07
 Mobile home park tenant . . . CV 613.33

LAW, EXPLANATION OF

Deliberations, during . . . CR 429.07
 General instructions, challenges in . . . CR 101.55; CV 101.55

LAW OF INSTRUCTIONS

Generally . . . CR 101.01 *et seq.*; CV 101.01 *et seq.*

LAYMAN'S OPINION

Generally . . . CR 409.19; CV 309.09

[References are to civil (CV) and criminal (CR) instruction numbers.]

LEMON LAW

Generally . . . CV 529.01

LESSER INCLUDED OFFENSES

Concluding instructions

Generally . . . CR 425.09

Purpose of submitting . . . CR 425.11

Robbery, aggravated; examples . . . CR 413.05

LIABILITY

Agency liability (See AGENCY LIABILITY)

Alcoholic beverages, service of (See INTOXICANTS, subhead: Liability for service of)

Animals, for (See ANIMALS, subhead: Liability for)

Employment relations (See EMPLOYMENT RELATIONS)

Governmental (See GOVERNMENTAL LIABILITY)

Guarantees, actions involving . . . CV 509.03

Husband and wife

Negligence of wife, liability of husband for . . . CV 701.09

Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)

Innkeepers (See INNKEEPERS, subhead: Loss of guest's property, liability for)

Premises liability (See PREMISES LIABILITY)

Product liability (See PRODUCT LIABILITY)

Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)

Sureties (See SURETIES)

LIKENESS, APPROPRIATION OF

Invasion of privacy . . . CV 433.07

LIMITED PURPOSE EVIDENCE

Trial, instructions during . . . CR 401.23; CV 309.05

LOITERING

Solicitation, to engage in . . . CR 507.241

M**MALICE**

Business relationship, tortious interference with . . . CV 453.01

Civil conspiracy; plaintiff's claim . . . CV 443.01

Contractual relationship, tortious interference with . . . CV 453.03

Defined . . . CV 439.01

Employment relations, tortious interference with . . . CV 453.05

Malicious combination defined for civil conspiracy claim . . . CV 443.01

Malicious prosecution

Civil malicious prosecution . . . CV 439.01

Criminal malicious prosecution . . . CV 439.03

Unfair competition by malicious litigation . . . CV 439.05

MALICIOUS PROSECUTION

Civil malicious prosecution . . . CV 439.01

Criminal malicious prosecution . . . CV 439.03

MALPRACTICE

Generally (See PROFESSIONAL NEGLIGENCE)

MALPRACTICE—Cont.

Medical (See MEDICAL NEGLIGENCE)

MANSLAUGHTER

Abortion manslaughter . . . CR 519.13(A); CR 519.13(B)

Involuntary . . . CR 503.04

Pregnancy, unlawful termination of

Involuntary manslaughter . . . CR 503.04

Voluntary manslaughter . . . CR 503.03

Vehicular . . . CR 503.06

Voluntary . . . CR 503.03

MANUFACTURED HOME PARKS (See MOBILE HOME PARKS)**MASSAGE**

Advertising of, unlawful . . . CR 527.24

Establishments, prohibited activities for . . . CR 507.42

MEDICAID FRAUD

Generally . . . CR 513.40

Medicaid eligibility fraud . . . CR 513.401

Value and special property . . . CR 425.23

MEDICAL EXPENSES

Damage award limited to . . . CV 315.27

MEDICAL INFORMATION

Unauthorized disclosure of nonpublic medical information

Generally . . . CV 457.01

Inducement of . . . CV 457.03

MEDICAL NEGLIGENCE

Generally . . . CV 417.01

Agents and employees of physicians . . . CV 417.11

Chance of survival or recovery, loss of less-than-even . . . CV 417.17

Employees and agents of physicians . . . CV 417.11

Hospital as defendant . . . CV 417.15

Informed consent, lack of

Generally . . . CV 417.07

Defense, statutory . . . CV 417.09

Interrogatories . . . CV 417.19

Res ipsa loquitur . . . CV 417.05

Standards of care

Generally . . . CV 417.03

Physicians and surgeons . . . CV 417.13

MENACING

Generally . . . CR 503.22

Aggravated . . . CR 503.21

Stalking, by . . . CR 503.211

MINORS (See also CHILDREN)

Abortion performed on woman under 18, unlawful . . . CR 519.12(B); CR 519.121

Automobile, operation of

Generally . . . CV 407.09

Parent, guardian, or other responsible person, liability of . . . CV 411.79

Earnings, recovery for loss of . . . CV 407.21

Firearms, possession of

Furnishing to minor . . . CR 523.21

Underage purchase . . . CR 523.211(B)

[References are to civil (CV) and criminal (CR) instruction numbers.]

MINORS (See also CHILDREN)—Cont.

Intoxicants, social provider's liability to minor for . . . CV 413.13

Sex offenses involving (See SEX OFFENSES)

MISCARRIAGE

Damages . . . CV 315.07

MISCHIEF, CRIMINAL

Generally . . . CR 509.07

MISTAKE OF FACT

Generally . . . CR 417.05

Contracts (See CONTRACTS)

MISTRIAL

Verdict, failure to reach; instructions during deliberations . . . CV 319.07

MOBILE HOME PARKS

Damages, claim for

Park operator, by; violation of statutory obligations . . . CV 613.17

Resident, by

Illegal acts of park operator . . . CV 613.31

Obligation of park operator, violation of . . . CV 613.15

Prohibited conduct of park operator . . . CV 613.25

Eviction

Holding over term

Owner . . . CV 613.21

Tenant . . . CV 613.23

Non-payment of rent . . . CV 613.13

Retaliatory conduct of park operator

Generally . . . CV 613.09

Affirmative defense . . . CV 613.11

Rules of park or safety code, violation of

First violation . . . CV 613.27

Second violation . . . CV 613.29

Termination of term resulting from sale of park . . . CV 613.19

Retaliatory conduct of park operator in eviction

Generally . . . CV 613.09

Affirmative defense . . . CV 613.11

Security deposit, claim for return of . . . CV 613.33

MONEY LAUNDERING

Terrorism, in support of . . . CR 509.29

MORTGAGES (See also RESIDENTIAL LENDING PRACTICES)

Conversion of chattel by mortgagee . . . CV 625.05

Gift of mortgage or money represented by mortgage . . . CV 637.09

MOTIVE

Proof of . . . CR 417.01

Transferred intent . . . CR 417.01

MOTOR VEHICLES (See AUTOMOBILES AND OTHER MOTOR VEHICLES)**MULTIPLE COUNTS**

Concluding instructions . . . CR 425.07

MULTIPLE PARTIES

General instruction . . . CV 311.03

Defendants, multiple (See DEFENDANTS (GENERALLY))

MURDER

Generally . . . CR 503.02

Aggravated; death penalty

Sentencing phase . . . CR 503.011

Trial phase . . . CR 503.01

Pregnancy, unlawful termination of

Generally . . . CR 503.02

Aggravated; death penalty . . . CR 503.01

N**NAME, APPROPRIATION OF**

Invasion of privacy . . . CV 433.07

NATURAL ASSETS

Eminent domain actions, valuation in . . . CV 609.17

NECESSITY

Defense of . . . CR 421.13

NEGLECT (See ABUSE AND NEGLECT)**NEGLIGENCE**

Generally . . . CV 401.01

Accident, defense of . . . CR 421.01

Act of God . . . CV 401.25

Assault, negligent . . . CR 503.14

Automobile negligence

Affirmative defenses . . . CV 411.73

Assured clear distance . . . CV 411.19

Care, degree of . . . CV 411.01

Damages . . . CV 315.19

Governmental liability for negligent operation of motor vehicle . . . CV 425.01

Guardian, liability of . . . CV 411.79

Illuminating devices, failure to use . . . CV 411.71

Lights, failure to display . . . CV 411.71

Loss of consciousness or other medical emergency . . . CV 401.21

Marked lanes, failure to drive in . . . CV 411.37

Matter of law, distinguished from negligence as . . . CV 411.01

Minor, liability of parent, guardian, or other responsible person . . . CV 411.79

Order or signal of police officer, failure to comply with . . . CV 411.03

Owner of vehicle, liability of

Generally . . . CV 411.75

Passenger not operator, owner as . . . CV 411.77

Parent, guardian, or other responsible person, liability of . . . CV 411.79

Passenger not operator, liability of owner when . . . CV 411.77

Per se negligence . . . CV 411.01

Private property, traffic rules on . . . CV 411.07

Reasonable control of vehicle . . . CV 411.15

Safety of persons or property, operation in willful or wanton disregard of . . . CV 411.13

[References are to civil (CV) and criminal (CR) instruction numbers.]

NEGLIGENCE—Cont.**Automobile negligence—Cont.**

Tire or mechanical failure

Generally . . . CV 401.23

Affirmative defenses . . . CV 411.73

Unsafe vehicle, operation of . . . CV 411.69

Blackout as excuse

Generally . . . CV 401.21

Affirmative defenses for automobile negligence
. . . CV 411.73

Burden of proof of defenses

Act of God . . . CV 401.25

Loss of consciousness or other medical emergency
. . . CV 401.21

Causation (See subhead: Proximate cause)

Caution signs, effect of presence of . . . CV 401.19

Children, actions by or involving

Generally . . . CV 407.01

Administrator, action by . . . CV 407.17

Child under 7, negligence by . . . CV 407.03

Comparative negligence; duty of parents . . . CV
407.15

Concluding instructions . . . CV 407.13

Damages . . . CV 407.17

Duty of parents . . . CV 407.15

Imputation of parents' negligence . . . CV 407.11

Ordinary care (See subhead: Ordinary care)

Statutory violation by child . . . CV 407.07

Tort of child, liability of parents for . . . CV 407.19

Common carriers . . . CV 401.35**Comparative negligence (See COMPARATIVE NEGLIGENCE)****Conclusions**

Children, actions by or involving . . . CV 407.13

Comparative negligence (See COMPARATIVE
NEGLIGENCE)

Defendant negligence, without . . . CV 406.03; CV
406.05

Plaintiff negligence, without . . . CV 406.01; CV
406.03

Concurrent but independent negligence . . . CV 401.39

Counterclaim, submission of . . . CV 311.07

Criminal negligence defined . . . CR 417.19

Custom . . . CV 401.03

Damages

Generally (See DAMAGES)

Interrogatories in comparative negligence actions
(See COMPARATIVE NEGLIGENCE, subhead:
Interrogatories on future damages)

Submission of causation and/or damage only
. . . CV 311.05

Dangerous substances, ordinary care involving . . . CV
401.11

Defenses

Accident, unavoidable . . . CR 421.01

Affirmative defenses for automobile negligence
. . . CV 411.73

Burden of proof (See subhead: Burden of proof of
defenses)

Informed consent, statutory defense to lack of
. . . CV 417.09

Professional, non-medical; defense of client negli-
gence . . . CV 421.05

NEGLIGENCE—Cont.

Defined . . . CR 417.19; CV 401.01

Disability, person under . . . CV 401.09

Due care, lapse of . . . CR 417.19

Duty to look . . . CV 401.05

Emergency, sudden

Affirmative defenses for automobile negligence
. . . CV 411.73

Automobile negligence, affirmative defenses for
. . . CV 411.73

Care, duty of . . . CV 401.13

Legal excuse . . . CV 401.15

Emotional distress, infliction of . . . CV 429.07

Foreseeability

Generally . . . CR 417.19; CV 401.07

Affirmative defenses for automobile negligence
. . . CV 411.73

Loss of consciousness or other medical emergency
. . . CV 401.21

Governmental liability (See GOVERNMENTAL LIABILITY)

Homicide, negligent . . . CR 503.05

Independent negligence . . . CV 401.39

Inference of . . . CV 401.33

Intoxication, lack of ordinary care due to . . . CV
401.17

Issues, presentation of

General instruction . . . CV 311.01

Causation

Separate and distinct element from negligence
. . . CV 311.11

Submission of . . . CV 311.05

Counterclaim . . . CV 311.07

Damages . . . CV 311.05

Multiple parties . . . CV 311.03

Per se negligence . . . CV 311.09

Submission of causation and/or damage only
. . . CV 311.05

Violations of statute . . . CV 311.09

Loss of consciousness or other medical emergency

Generally . . . CV 401.21

Affirmative defenses in automobile negligence
. . . CV 411.73

Medical (See MEDICAL NEGLIGENCE)**Ordinary care**

Generally . . . CV 401.01

Caution signs, presence of . . . CV 401.19

Children, care of

Generally . . . CV 407.01

Child under 7 . . . CV 407.03

Duty of parents . . . CV 407.15

Measure of care by child . . . CV 407.05

Tort liability of parents . . . CV 407.19

Common carriers . . . CV 401.35

Dangerous substances . . . CV 401.11

Defined . . . CV 401.01

Duty to look . . . CV 401.05

Persons under disability . . . CV 401.09

Sudden emergency . . . CV 401.13

Per se negligence

Automobile negligence . . . CV 411.01

Issues, presentation of . . . CV 311.09

[References are to civil (CV) and criminal (CR) instruction numbers.]

NEGLIGENCE—Cont.

- Product liability, common law negligence in . . . CV 451.11 *et seq.*
- Professional negligence
 - Generally (See PROFESSIONAL NEGLIGENCE)
 - Medical negligence (See MEDICAL NEGLIGENCE)
- Proximate cause
 - Generally . . . CV 405.01
 - Intervening and superseding cause . . . CV 405.05
 - Remote cause or condition . . . CV 405.03
 - Separate and distinct element from negligence, as . . . CV 311.11
 - Submission of issue . . . CV 311.05
- Reckless conduct . . . CV 401.41
- Res ipsa loquitur
 - Generally . . . CV 401.33
 - Medical negligence . . . CV 417.05
- Securities, common law claims for relief concerning . . . CV 541.09
- Substantial negligence defined . . . CR 417.19
- Under the influence, lack of ordinary care while . . . CV 401.17
- Wife's negligence, liability of husband for . . . CV 701.09
- Willful or wanton misconduct . . . CV 401.41

NEGOTIABLE INSTRUMENTS

- Theft, value . . . CR 425.23

NUCLEAR WEAPONS (See RADIOLOGICAL OR NUCLEAR WEAPONS)**NUDITY**

- Child endangerment . . . CR 519.22
- Defined . . . CR 417.39
- Nudity-oriented materials or performances
 - Impaired person in, use of . . . CR 507.323
 - Minors in, use of . . . CR 507.323

NUISANCE

- Absolute
 - Abnormally dangerous activity . . . CV 621.03
 - Intentional acts . . . CV 621.05
 - Statutory violation . . . CV 621.01
- "Coming to the nuisance" as bar to complaint . . . CV 621.11
- Damages, compensatory . . . CV 621.13
- Qualified . . . CV 621.07
- Regulated activities, exceptions for . . . CV 621.09

O**OBJECTIONS TO INSTRUCTIONS**

- General instructions, after . . . CR 101.63; CV 101.63

OBSCENITY, PANDERING OF

- Generally . . . CR 507.32
- Impaired person, obscenity involving . . . CR 507.321
- Minors, obscenity involving . . . CR 507.321

OBSTRUCTION OF JUSTICE

- Generally . . . CR 521.32

OFFICIAL BUSINESS, DISRUPTION OF

- Generally . . . CR 521.31

ORDNANCE, DANGEROUS

- Biological weapons
 - Possession . . . CR 509.26
 - Use, knowing or reckless . . . CR 509.27
- Chemical weapons
 - Possession . . . CR 509.26
 - Use, knowing or reckless . . . CR 509.27
- Courthouse, in . . . CR 523.123; CR 523.123(A); CR 523.123(B)
- Explosive devices
 - Possession . . . CR 509.26
 - Use, knowing or reckless . . . CR 509.27
- Failure to secure . . . CR 523.19
- Manufacturing or processing explosives . . . CR 523.17
- Radiological or nuclear weapons
 - Possession . . . CR 509.26
 - Use, knowing or reckless . . . CR 509.27
- School premises, on or near (See WEAPONS, DANGEROUS, subhead: School premises, firearms, weapons or ordnance on or near)
- Theft . . . CR 513.02
- Unlawful possession . . . CR 523.17

OWNERSHIP

- Defined . . . CR 417.15

P**PANIC, INDUCING**

- Generally . . . CR 517.31
- Discharging firearm at or into school with intent to cause harm or panic . . . CR 523.161
- False alarms, making of . . . CR 517.32

PAROLE OFFICER

- Defined . . . CR 521.24

PATERNITY

- Generally . . . CV 705.01
- Competency of witnesses . . . CV 705.11
- Concluding instructions . . . CV 705.13
- Exhibiting of child . . . CV 705.09
- Issues, presentation of . . . CV 705.01
- Jury's duty . . . CV 705.15
- Presumption of paternity and burden of proof
 - Defendant . . . CV 705.05
 - Person other than defendant . . . CV 705.03
- Serological tests . . . CV 705.07
- Verdict . . . CV 705.13

PATIENTS

- Abuse and neglect
 - Generally . . . CR 503.34
 - False complaint, filing of . . . CR 503.35
- Endangerment . . . CR 503.341

PERJURY

- Generally . . . CR 521.11

PERSONAL INJURY

- Automobile accident causing injury, leaving scene of . . . CR 749.02; CR 749.021
- Damages (See DAMAGES)

[References are to civil (CV) and criminal (CR) instruction numbers.]

PERSONAL INJURY—Cont.

Hunters, injury of persons or property by . . . CR 551.03
Insurance claim, burden of proof in . . . CV 709.25

PERSONAL PROPERTY

Automobile accident damaging property, leaving scene of . . . CR 749.021
Conversion (See CONVERSION)
Damages (See DAMAGES)
Damaging or endangering, criminal . . . CR 509.06
Eminent domain actions, valuation of fixtures in . . . CV 609.15
Secured transactions (See SECURED TRANSACTIONS (U.C.C.))
Vandalism . . . CR 509.05(B)

PHARMACISTS (See DRUGGISTS)**PHYSICAL HARM**

Specification in concluding instructions . . . CR 425.21

PHYSICIANS

Defined . . . CR 519.171
Negligence (See MEDICAL NEGLIGENCE)

PIRACY

Motion picture piracy . . . CR 513.07

POLICE AND FIRE PERSONNEL (See FIRE AND POLICE PERSONNEL)**POLYGRAPH TESTS**

Generally . . . CR 409.23

POSSESSION

Generally . . . CR 417.21
Adverse possession . . . CV 601.03
Biological weapons . . . CR 509.26
Chemical weapons . . . CR 509.26
Conversion (See CONVERSION)
Defined . . . CR 417.21
Drug possession (See DRUG OFFENSES)
Exotic animals . . . CR 551.13
Explosive devices . . . CR 509.26
Firearms . . . CR 523.12 *et seq.*
Joint possession . . . CR 417.21
Radiological or nuclear weapons . . . CR 509.26
Secured transactions
 Perfection of interest by possession . . . CV 517.09
 Right of secured party to take possession . . . CV 517.15
Tools, criminal . . . CR 523.24
Transfer of, landlord liability at or after . . . CV 617.15; CV 617.17
Unauthorized device . . . CR 513.041
Weapons, dangerous . . . CR 523.12 *et seq.*
Wrongful possession . . . CV 447.01

PREEXISTING CONDITION

Damages, acceleration or aggravation of prior injury or condition . . . CV 315.15

PREGNANCY

Defined . . . CR 519.171
Pregnant victim . . . CR 541.1423

PREGNANCY—Cont.

Unlawful termination (See PREGNANCY, UNLAWFUL TERMINATION OF)

PREGNANCY, UNLAWFUL TERMINATION OF

Homicide, as
 Negligent homicide . . . CR 503.05
 Reckless homicide . . . CR 503.041
 Vehicular homicide
 Generally . . . CR 503.07
 Aggravated . . . CR 503.06
Manslaughter, as
 Involuntary . . . CR 503.04
 Voluntary . . . CR 503.03
Murder, as
 Generally . . . CR 503.02
 Aggravated; death penalty . . . CR 503.01

PREJUDICE IN INSTRUCTIONS

Appeal, as basis for . . . CR 101.17; CV 101.17

PRELIMINARY INSTRUCTIONS

Generally . . . CR 101.27; CV 101.27
Issues raised after . . . CR 101.29; CV 101.29
Repetition in final instructions . . . CR 101.29; CV 101.29
Sample instructions . . . CR 205.01; CV 205.01
Trial, before . . . CR 101.25; CV 101.25

PREMISES LIABILITY

Generally . . . CV 617.01
Business visitors . . . CV 617.03
Fire/police personnel . . . CV 617.07
Frequenters . . . CV 617.11
Invitees . . . CV 617.03
Landlord liability
 Generally . . . CV 617.19
 Conditions arising after transfer of possession . . . CV 617.15
 Conditions arising at transfer of possession . . . CV 617.17
Licensees . . . CV 617.09
Recreational users . . . CV 617.13
Social guests . . . CV 617.05
Tenant liability . . . CV 617.21
Trespassers . . . CV 617.09

PREPONDERANCE OF EVIDENCE

Generally . . . CR 417.29; CV 303.05
Sample final instructions . . . CR 207.21; CV 207.05

PRESUMPTIONS

Generally . . . CV 309.01
Evidential . . . CR 417.33

PRIMA FACIE EVIDENCE

Generally . . . CR 417.31; CV 309.03
Bailment agreement, violation of . . . CV 629.03

PRIOR CONVICTIONS OR OFFENSES

Concluding instructions . . . CR 425.15
Sample final instructions . . . CR 207.09
Trial, instructions during . . . CR 401.25; CR 409.11

[References are to civil (CV) and criminal (CR) instruction numbers.]

PRIOR INJURY OR CONDITION

Damages, acceleration or aggravation of condition . . . CV 315.15

PRISONS, PRISONERS AND DETAINEES

Aggravated riot . . . CR 517.02(B)
Dereliction of duty by detention facility officers . . . CR 521.44(C)
Discharge of firearm at correction officer specification . . . CR 541.1412
Escape (See ESCAPE)
Harassment by inmate . . . CR 521.38
Weapons conveyed into detention facility
Generally . . . CR 521.35(A); CR 521.36
Possession by detainee . . . CR 523.131

PRIVACY, INVASION OF

Embarrassing private facts, public disclosure of . . . CV 433.03
False light . . . CV 433.05
Intrusion upon seclusion of another . . . CV 433.01
Name or likeness, appropriation of . . . CV 433.07
Publicity, right of . . . CV 433.09

PRIVATE PROPERTY

Traffic rules on . . . CV 411.07

PROBATE

Defined . . . CV 633.01
Will contests (See WILL CONTESTS)

PRODUCT LIABILITY

Common law negligence . . . CV 451.11 *et seq.*
Damages . . . CV 451.21
Defenses, affirmative . . . CV 451.19
Design or formulation defect
Common law negligence . . . CV 451.11
Statutory defect . . . CV 451.05
Failure to warn
Common law negligence . . . CV 451.15
Statutory violation . . . CV 451.07
Implied warranty, common law breach of . . . CV 451.17
Interrogatories . . . CV 451.23
Manufacturing or construction defect
Common law negligence . . . CV 451.13
Statutory defect . . . CV 451.03
Non-conformance to representation . . . CV 451.09
Statutory . . . CV 451.01 *et seq.*

PROFESSIONAL NEGLIGENCE

Generally . . . CV 421.01
Defense of client negligence . . . CV 421.05
Interrogatories . . . CV 421.07
Medical negligence (See MEDICAL NEGLIGENCE)
Standards of care . . . CV 421.03

PROMISSORY ESTOPPEL

Contract claims . . . CV 501.31
Employment contracts . . . CV 537.03

PROPERTY

Depriving of . . . CR 417.13
Hunters, injury of persons or property by . . . CR 551.03

PROPERTY—Cont.

Ownership . . . CR 417.15
Personal property (See PERSONAL PROPERTY)
Real property (See REAL PROPERTY)
Special property, value and . . . CR 425.23
Unauthorized use of . . . CR 513.04
Value of property destroyed or stolen, concluding instructions on . . . CR 425.23

PROSTITUTION

Generally . . . CR 507.25
Compelling . . . CR 507.21
Procuring . . . CR 507.23
Promoting . . . CR 507.22
School, in proximity of . . . CR 541.1421
Soliciting
Generally . . . CR 507.24
Loitering to engage in . . . CR 507.241

PROTECTION ORDERS

Violation of . . . CR 519.27

PROXIMATE CAUSE

Negligent acts (See NEGLIGENCE)
Sample final instructions . . . CV 207.19

PUBLIC ADMINISTRATION, OFFENSES

AGAINST (See JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST)

PUBLIC AMUSEMENT

Criminal trespass on place of . . . CR 511.23

PUBLIC INDECENCY

Generally . . . CR 507.09

PUBLICITY, RIGHT OF

Invasion of privacy . . . CV 433.09

PUBLIC PEACE, OFFENSES AGAINST

Crowd safety statute, violation of . . . CR 517.40
Disorderly conduct
After 3/23/19 . . . CR 517.11(A); CR 517.11(B)
After 1/25/02 but before 3/23/19 . . . CR 517.11(A); CR 517.11(B)
Riot (See RIOT)
Emergency, misconduct at . . . CR 517.13
False alarms, making of . . . CR 517.32
Harassment via telecommunications . . . CR 517.21(A); CR 517.21(B)
Infectious agents, improper handling of . . . CR 517.47
Lawful meeting, disturbing of . . . CR 517.12
Panic, inducing (See PANIC, INDUCING)
Public transportation, misconduct involving . . . CR 517.41
Riot (See RIOT)
Telecommunications harassment . . . CR 517.21(A); CR 517.21(B)
Violence, inciting to . . . CR 517.01

PUBLIC SERVICES, DISRUPTION OF

Generally . . . CR 509.04

PURPOSE, ELEMENT OF

Coma or blackout, acts committed while in . . . CR 417.07

[References are to civil (CV) and criminal (CR) instruction numbers.]

PURPOSE, ELEMENT OF—Cont.

Deadly weapon, use of . . . CR 417.01
 Fraudulent purpose . . . CR 417.03
 Intoxication and . . . CR 421.09 *et seq.*
 Mistake of fact, acting under . . . CR 417.05
 Motive, proof of . . . CR 417.01
 Purposely acting . . . CR 417.01
 Transfer of purpose . . . CR 417.09

PYRAMID SCHEMES

Generally . . . CR 533.92

R

RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (See RICO OFFENSES)

RADIOLOGICAL OR NUCLEAR WEAPONS

Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28
 Possession . . . CR 509.26
 Use, knowing or reckless . . . CR 509.27

RAFFLES (See also GAMBLING; GAMING)

Generally . . . CR 515.092

RAPE

Generally . . . CR 507.02(A)(1); CR 507.02(A)(2)
 Attempted rape specification
 Generally . . . CR 541.1418
 Child victims under age of ten . . . CR 541.1419
 Force or threat of force, compelled by . . . CR 541.1419
 Repeat offenders . . . CR 541.1420

REAL PROPERTY

Adjoining owners . . . CV 601.07
 Adverse possession . . . CV 601.03
 Automobile accident damaging realty, leaving scene of . . . CR 749.03
 Breaking and entering . . . CR 511.13(A); CR 511.13(B)
Caveat emptor defense in real estate fraud claim . . . CV 449.13
 Damaging or endangering
 Criminal . . . CR 509.06
 Damages for . . . CV 315.35
 Easements . . . CV 601.09
 Ejectment . . . CV 601.01
 Eminent domain (See EMINENT DOMAIN)
 Fraud in real estate sales; *caveat emptor* defense . . . CV 449.13
 RICO offenses (See RICO OFFENSES, subhead: Acquiring or maintaining interest in enterprise or real property)
 Special use property, eminent domain actions involving . . . CV 609.19
 Trespass (See TRESPASS)
 Vandalism . . . CR 509.05(A)

REASONABLE DOUBT

General instructions . . . CR 405.07
 Sample final instructions . . . CR 207.13

RECESS INSTRUCTIONS

Generally . . . CR 401.11; CV 309.13
 Extended recess and separate hearings . . . CR 401.13
 Sample instructions . . . CR 205.05; CV 205.05

RECKLESS CONDUCT

Generally . . . CV 401.41

RECKLESSNESS, CRIMINAL

Defined . . . CR 417.17
 Homicide, reckless . . . CR 503.041

RECORDS AND RECORDINGS

Criminal record information, misuse of . . . CR 527.22
 Grand jury court reporter, oath of . . . CR 301.05
 Instructions, recording of . . . CR 101.13; CV 101.13
 Securing of writings by deception . . . CR 513.43
 Tampering with records . . . CR 513.42

RENT

Eviction for non-payment
 Generally . . . CV 613.01
 Mobile home park tenant . . . CV 613.13

RENTED PROPERTY OR SERVICES

Theft of . . . CR 513.02

REQUESTS TO INSTRUCT

Final instructions . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75
 General instructions, after . . . CR 101.75; CV 101.75
 Special requests . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75
 Trial, during . . . CV 309.25
 Written requests . . . CR 401.27; CV 309.25

RESIDENTIAL LENDING PRACTICES

Advertisements, failure of mortgage broker to include registration number on . . . CV 525.17
 Bona fide third parties, fees for services performed by . . . CV 525.11; CV 525.13
 Consumer Sales Practices Act, violations of . . . CV 525.21
 Cost of loan, failure of registrant to deliver good faith estimate of . . . CV 525.03
 Damages . . . CV 525.19
 Disclosure statement, failure of registrant to deliver mortgage loan . . . CV 525.03
 Documents, failure to return original . . . CV 525.11
 Fee premiums . . . CV 525.11
 Improper payment of fees to mortgage broker . . . CV 525.13
 Kickbacks . . . CV 525.11
 Loan officer, license to act as . . . CV 525.01
 Material changes in terms of loan, failure to provide timely disclosure of . . . CV 525.07
 Mortgage broker, certificate of registration to act as . . . CV 525.01
 Prohibited conduct . . . CV 525.09; CV 525.11
 Punitive damages . . . CV 525.19
 Referral fees . . . CV 525.11
 Required information, failure of registrant to provide . . . CV 525.03
 Tax and payment disclosures, failure of registrant to deliver . . . CV 525.05

[References are to civil (CV) and criminal (CR) instruction numbers.]

RESIDENTIAL LENDING PRACTICES—Cont.

Title insurance agents, violations by . . . CV 525.21
 Unconscionable acts in connection with residential mortgages . . . CV 525.23
 Unlawful lending practices by loan officer or mortgage broker . . . CV 525.15

RESTRAINT, UNLAWFUL

Generally . . . CR 505.03

RETALIATION

Generally . . . CR 521.05

REVIVOR

Generally . . . CV 303.01

RICO OFFENSES

Generally . . . CV 445.01
 Acquiring or maintaining interest in enterprise or real property
 Burden of proof . . . CV 445.09
 Causation . . . CV 445.13
 Damages . . . CV 445.13
 Definitions . . . CV 445.11
 Elements . . . CV 445.09; CV 445.11
 Use or investment of proceeds in (See subhead: Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise)
 Civil actions . . . CV 445.01
 Conducting or participating in affairs of enterprise
 Burden of proof . . . CV 445.03
 Causation . . . CV 445.07
 Damages . . . CV 445.07
 Definitions . . . CV 445.05
 Elements . . . CV 445.03; CV 445.05
 Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt
 Burden of proof . . . CV 445.21
 Causation . . . CV 445.25
 Damages . . . CV 445.25
 Definitions . . . CV 445.23
 Elements . . . CV 445.21; CV 445.23
 Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise
 Burden of proof . . . CV 445.15
 Causation . . . CV 445.19
 Damages . . . CV 445.19
 Definitions . . . CV 445.17
 Elements . . . CV 445.15; CV 445.17

RIOT

Generally . . . CR 517.03
 Aggravated
 Generally . . . CR 517.02(A)
 Inmate at correctional facility . . . CR 517.02(B)

RISK

Assumption of risk . . . CV 403.09
 Defined . . . CR 417.19
 Substantial risk defined . . . CR 417.17

ROADS AND BRIDGES

Governmental liability for failure to maintain . . . CV 425.05

ROBBERY

Generally . . . CR 511.02
 Aggravated . . . CR 511.01(A); CR 511.01(B)
 Deadly weapon, with . . . CR 511.02

S**SAFE CRACKING**

Generally . . . CR 511.31

SALE OF GOODS, CONTRACTS FOR (U.C.C.)

Acceptance of goods
 Revocation by buyer (See subhead: Revocation of acceptance, buyer's)
 Words or conduct indicating . . . CV 505.37
 Buyer's remedies
 Acceptance of goods, words or conduct indicating . . . CV 505.37
 Damages
 Breach of warranty . . . CV 505.45
 Cover damages . . . CV 505.49
 Incidental and consequential . . . CV 505.51
 Nondelivery, repudiation, rejection and revocation of acceptance . . . CV 505.43
 Limitation on . . . CV 505.53
 Notice of breach . . . CV 505.47
 Rejection . . . CV 505.35
 Revocation of acceptance (See subhead: Revocation of acceptance, buyer's)
 Confirmation or acceptance, additional terms in . . . CV 505.07
 Damages
 Buyer's remedies (See subhead: Buyer's remedies)
 Seller's remedies
 Incidental damages . . . CV 505.31
 Non-acceptance or repudiation, damages for . . . CV 505.27
 Delivery, tender of; seller's . . . CV 505.23
 Express warranties
 Generally . . . CV 505.11
 Exclusion or modification . . . CV 505.17
 Formation of contract
 Generally . . . CV 505.01
 Conduct of parties, formed by . . . CV 505.03
 Implied warranties
 Exclusion or modification . . . CV 505.19
 Fitness for particular purpose . . . CV 505.15
 Merchantability . . . CV 505.13
 Usage of trade . . . CV 505.13
 Modification, rescission and waiver . . . CV 505.09
 Obligations of parties
 Buyer's tender of payment . . . CV 505.21
 Seller's tender of delivery . . . CV 505.23
 Open price term . . . CV 505.05
 Payment, tender of; buyer's . . . CV 505.21
 Remedies
 Buyer's (See subhead: Buyer's remedies)
 Seller's (See subhead: Seller's remedies)
 Rescission . . . CV 505.09
 Revocation of acceptance, buyer's
 Generally . . . CV 505.39
 Damages . . . CV 505.43
 Obligations after . . . CV 505.41

[References are to civil (CV) and criminal (CR) instruction numbers.]

SALE OF GOODS, CONTRACTS FOR (U.C.C.)—

Cont.

Seller's remedies

Damages

Incidental . . . CV 505.31

Non-acceptance or repudiation, for . . . CV 505.27

Limitation on . . . CV 505.33

Price, action for . . . CV 505.29

Resale . . . CV 505.25

Waiver . . . CV 505.09

Warranties

Breach by seller

Damages . . . CV 505.45

Notice of . . . CV 505.47

Express warranties

Generally . . . CV 505.11

Exclusion or modification . . . CV 505.17

Implied warranties (See subhead: Implied warranties)

SCENE VISITS

Generally . . . CR 401.15; CV 309.15

Eminent domain actions . . . CV 609.03

SCHOOLS

Prostitution-related offense in proximity of school . . . CR 541.1421

Raffle conduct, illegal . . . CR 515.092

Safety zone specification, school . . . CR 541.143

Weapons on or near premises (See WEAPONS, DANGEROUS, subhead: School premises, firearms, weapons or ordnance on or near)

SECURED TRANSACTIONS (U.C.C.)

Accessions . . . CV 517.11

Buyer in ordinary course of business . . . CV 517.01

Collateral

Default, disposition after . . . CV 517.17

Description of . . . CV 517.03

Secured party, in possession of . . . CV 517.07

Commingled goods . . . CV 517.13

Default, disposition of collateral after . . . CV 517.17

Enforceability of interest . . . CV 517.05

Perfection of interest by possession . . . CV 517.09

Possession

Perfection of interest by . . . CV 517.09

Right of secured party to take . . . CV 517.15

Processed goods . . . CV 517.13

SECURITIES

Advisor misconduct, liability for . . . CV 541.03

Common law claims for relief . . . CV 541.09

Fraud

Common law claims for relief . . . CV 541.09

Liability of seller for . . . CV 541.01

Investment advisor or investment advisor representative misconduct, liability for . . . CV 541.05

Prohibited conduct involving . . . CV 541.07

SELF-DEFENSE (See DEFENSES, subhead: Self-defense)

SELF-REPRESENTATION

Instructions during trial . . . CR 401.03

SEQUESTRATION

Generally . . . CR 429.03

SERVICE DOG

Assault of . . . CR 521.321

Theft . . . CR 513.02

SERVICES

Theft of . . . CR 513.02

SEX OFFENSES

Battery, sexual . . . CR 507.03

Bestiality . . . CR 559.21

Cabaret, operation of adult (See CABARET, ADULT)

Child sexual abuse . . . CR 519.22

Child-victim oriented offense; duty of sex offender to register or send notice of intent to reside . . . CR 550.041

Corruption of minor . . . CR 507.04

Illegally operating sexually oriented business . . . CR 507.40(B)

Impaired persons

Nudity-oriented materials or performances, use in . . . CR 507.323

Obscenity involving, pandering of . . . CR 507.321

Sexually oriented matter involving, pandering of . . . CR 507.322

Importuning . . . CR 507.07

Loitering to engage in solicitation . . . CR 507.241

Massage establishments, prohibited activities in . . . CR 507.42

Matter harmful to juveniles

Deception to obtain . . . CR 507.33

Displaying . . . CR 507.311

Disseminating . . . CR 507.31

Minors

Attempted rape specification for victims under age of ten . . . CR 541.1419

Child-victim oriented offense; duty of sex offender to register or send notice of intent to reside . . . CR 550.041

Commercial sexual exploitation of . . . CR 507.19

Corruption of . . . CR 507.04

Exploitation, commercial . . . CR 507.19

Matter harmful to juveniles (See subhead: Matter harmful to juveniles)

Nudity-oriented materials or performances, use in . . . CR 507.323

Obscenity involving, pandering of . . . CR 507.321

Sexually oriented matter involving, pandering of . . . CR 507.322

Unlawful sexual conduct with . . . CR 507.04

Nudity-oriented materials or performances

Impaired person in, use of . . . CR 507.323

Minors in, use of . . . CR 507.323

Objectionable materials, compelling acceptance of . . . CR 507.34(A); CR 507.34(B)

Obscenity, pandering of

Generally . . . CR 507.32

Impaired person, obscenity involving . . . CR 507.321

Minors, obscenity involving . . . CR 507.321

[References are to civil (CV) and criminal (CR) instruction numbers.]

SEX OFFENSES—Cont.**Pandering****Obscenity**

Generally . . . CR 507.32

Impaired person, involving . . . CR 507.321

Minors, involving . . . CR 507.321

Sexually oriented matter

Impaired person, involving . . . CR 507.322

Minors, involving . . . CR 507.322

Procuring . . . CR 507.23

Prostitution (See PROSTITUTION)

Public indecency . . . CR 507.09

Rape (See RAPE)

Registration of sex offenders**Change of address notice**

Generally . . . CR 550.05

Periodic verification of address . . . CR 550.06

Duty to comply with registration requirements

. . . CR 550.04

Duty to register

Child-victim oriented offense . . . CR 550.041

Offenses before July 1, 1997 . . . CR 550.02

Offenses on or after July 1, 1997 . . . CR 550.04

Notice of intent to reside, duty to send

Generally . . . CR 550.04

Child-victim oriented offense . . . CR 550.041

Restraint, unlawful . . . CR 505.03

Sexual imposition

Generally . . . CR 507.06

Gross sexual imposition . . . CR 507.05

Sexually oriented business, illegally operating . . . CR 507.40(B)

Sexually oriented matter, pandering of

Impaired persons, involving . . . CR 507.322

Minors, involving . . . CR 507.322

Sexually violent offense defined . . . CR 507.71

Sexually violent predators

Concluding instructions . . . CR 425.29

Escape . . . CR 521.34(A)(2)

Gross sexual imposition . . . CR 507.05

Specification . . . CR 507.71

Sexual motivation

Defined . . . CR 507.71

Restraint, unlawful . . . CR 505.03

Specification in concluding instructions . . . CR 425.31; CR 507.72

Sexual penetration, felonious . . . CR 507.12(A)(1); CR 507.12(A)(2)

Sexual terms defined . . . CR 417.39

Soliciting

Generally . . . CR 507.24

Loitering to engage in . . . CR 507.241

Specifications

Attempted rape of victims under age of ten . . . CR 541.1419

Sexual motivation; concluding instructions . . . CR 425.31; CR 507.72

Violent predators, sexually . . . CR 507.71

Terms defined . . . CR 417.39

Unlawful sexual conduct with minor . . . CR 507.04

Voyeurism . . . CR 507.08

SEXUAL HARASSMENT**Employment discrimination claims**

Hostile work environment . . . CV 533.17

Loss of tangible job benefit . . . CV 533.15

SEXUALLY ORIENTED BUSINESS

Cabaret, operation of adult (See CABARET, ADULT)

Illegally operating . . . CR 507.40(B)

Massage establishments, prohibited activities in . . . CR 507.42

SEXUAL TERMS

Defined . . . CR 417.39

SHAM LEGAL PROCESS, USE OF

Generally . . . CR 521.52

SIMULATION, CRIMINAL

Generally . . . CR 513.32

SLUGS, MAKING OR USING

Generally . . . CR 513.33

SOLICITATION**Compensation by public official, improper**

Generally . . . CR 521.43(A)

Appointment or preference, for . . . CR 521.43(B)

Coerced contributions . . . CR 521.43(C)

Sexual

Generally . . . CR 507.24

Loitering to engage in . . . CR 507.241

SPECIAL VERDICTS

Abolition of . . . CR 101.37; CV 101.37

SPECIFICATIONS

Generally . . . CR 541.01

Aggravating circumstances; concluding instructions . . . CR 425.27

Body armor

Generally . . . CR 541.1411

Wearing of during commission of felony; concluding instructions . . . CR 425.19

Complicity (See COMPLICITY)**Firearms (See FIREARMS)**

Gang activity, criminal . . . CR 541.142

Operating a vehicle under the influence (OVI) . . . CR 541.1413

Peace officers

Aggravated vehicular homicide, victim of . . . CR 541.1414

Discharge of firearm at peace officer or correction officer . . . CR 541.1412

Physical harm, deadly weapons and . . . CR 425.21

Rape, attempted (See RAPE, subhead: Attempted rape specification)

School safety zone . . . CR 541.143

Sex offenses (See SEX OFFENSES)

SPOUSAL SUPPORT

Interference with issuance or modification of support order . . . CR 519.231

Liability of husband for

Generally . . . CV 701.01

Burden of proof . . . CV 701.03

Exceptions . . . CV 701.07

[References are to civil (CV) and criminal (CR) instruction numbers.]

SPOUSAL SUPPORT—Cont.

Liability of husband for—Cont.

Necessaries defined . . . CV 701.11

STALKING, MENACING BY

Generally . . . CR 503.211

STATUTE OF LIMITATIONS

Governmental liability . . . CV 425.13

STILLBIRTH

Damages . . . CV 315.07

STOLEN PROPERTY, RECEIVING OF

Generally . . . CR 513.51

SUBROGATION

Damages . . . CV 315.25

SUPPORT CLAIMS

Child support (See CHILD SUPPORT)

Spousal support (See SPOUSAL SUPPORT)

SURETIES

Contribution, liability for . . . CV 513.07

Extension of time, effect of agreement for . . . CV 513.05

Liability

Bond of agent, surety's liability on . . . CV 513.01

Contribution, for . . . CV 513.07

Revival of . . . CV 513.09

Strict construction of contract . . . CV 513.03

T

TAXES

Damage awards, income tax considerations in . . . CV 315.45

Residential lending practices; failure of registrant to deliver tax and payment disclosures . . . CV 525.05

Sample final instruction for income taxes . . . CV 207.31

TELECOMMUNICATION PROPERTY

Unauthorized use, failure to report . . . CR 521.22(A)

TENANTS (See LANDLORD AND TENANT)**TERRORISM**

Generally . . . CR 509.24

Money laundering in support of terrorism . . . CR 509.29

Soliciting or providing support for . . . CR 509.22

Threats, terroristic . . . CR 509.23

TESTIMONY

Accomplice testimony . . . CR 409.17

Acts of witnesses, weighing of testimony on . . . CR 409.33

Deposition, by . . . CR 409.27; CV 309.07

Expert witnesses (See EXPERT WITNESSES)

Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05

Interpreters and translators

Civil trials, use in . . . CV 301.13

Criminal trials, in . . . CR 401.29

TESTIMONY—Cont.

Interpreters and translators—Cont.

Criminal trials, use in . . . CR 401.29

Layman's opinion . . . CR 409.19; CV 309.09

Multiple defendants . . . CR 409.15

Refusal or inability to give

Generally . . . CV 309.19

Defendant's . . . CR 207.15; CR 409.07

THEFT

General instruction . . . CR 513.02

Cable service, theft of . . . CR 513.041

Computer systems or networks, unauthorized use of . . . CR 513.04

Insurance purposes, defined for . . . CV 709.41

Property, unauthorized use of . . . CR 513.04

Public or party official, by . . . CR 521.41

Stolen property, receiving of . . . CR 513.51

Unauthorized device, possession or sale of . . . CR 513.041

Value and special property . . . CR 425.23

Vehicle, unauthorized use of . . . CR 513.03

THEFT IN OFFICE

Value and separate property . . . CR 425.23

THREATS

Attempted rape specification, victim compelled by force or threat of force under . . . CR 541.1419

Defined . . . CR 417.35

Terroristic . . . CR 509.23

TIME, ISSUE OF

Presentation of issue . . . CR 413.07

TOBACCO PRODUCTS, ILLEGAL DISTRIBUTION OF

Children, to . . . CR 527.02(B)(1) *et seq.*

False identity documents, furnishing to child of . . . CR 527.02(B)(3)

Packs containing fewer than 20 cigarettes, sale of . . . CR 527.02(B)(4)

Signs regarding sale, failure to post . . . CR 527.02(B)(2)

Smaller quantity of cigarettes than placed in pack, sale of . . . CR 527.02(B)(5)

Vending machines, improper placement of . . . CR 527.02(C)

TOOLS, CRIMINAL

Possession of . . . CR 523.24

TORT CLAIMS

Agency liability . . . CV 423.03

Child, tort by; liability of parents . . . CV 407.19

Damages (See DAMAGES, subhead: Tort actions)

Employment relations (See EMPLOYMENT RELATIONS)

Intentional

Allocation of damages, multiple defendants, interrogatories required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

[References are to civil (CV) and criminal (CR) instruction numbers.]

TORT CLAIMS—Cont.**Intentional—Cont.**

- Business relationship, tortious interference with . . . CV 453.01
- Contractual relationship, tortious interference with . . . CV 453.03
- Employer intentional tort . . . CV 537.09
- Employment relations, tortious interference with . . . CV 453.05
- Inheritance, tortious interference with expectancy of . . . CV 453.07

TOXIC CHEMICAL WEAPONS (See CHEMICAL WEAPONS)**TRADEMARKS**

Counterfeiting . . . CR 513.34

TRADE PRACTICES

Pyramid schemes . . . CR 533.92

TRADE SECRETS

Appropriation of . . . CV 537.11

TRAFFICKING IN PERSONS (See HUMAN TRAFFICKING)**TRAFFIC OFFENSES**

Alcohol-related (See ALCOHOL OFFENSES, subhead: Traffic offenses)

- Assured clear distance . . . CV 411.19
- Backing of vehicle . . . CV 411.47
- Blind persons, failure to yield right of way to . . . CV 411.63
- Car signals . . . CV 411.49
- Crosswalks, right of way of pedestrians in . . . CV 411.61
- Divided highways . . . CV 411.41
- Drug-related (See DRUG OFFENSES, subhead: Traffic offenses; operation under influence of alcohol or drugs)
- Emergency vehicles (See subhead: Public safety vehicles)
- Entering highway from other than roadway . . . CV 411.59
- Flashing traffic signals . . . CV 411.09
- Hand and arm signals . . . CV 411.49
- Hanging outside of vehicles . . . CV 411.65
- Hazardous zones . . . CV 411.33
- Highways
 - Divided . . . CV 411.41
 - Entering highway from other than roadway . . . CV 411.59
 - One-way . . . CV 411.35
 - Parking on . . . CV 411.67
- Intersections, turns at . . . CV 411.43
- Left of center, driving on
 - Generally . . . CV 411.31
 - Passing . . . CV 411.27
- Left turn, vehicle yielding right of way for . . . CV 411.09
- Local traffic laws . . . CV 411.09
- Marked lanes, driving in . . . CV 411.37
- One-way highways . . . CV 411.35

TRAFFIC OFFENSES—Cont.

- Opposite directions, vehicles traveling in . . . CV 411.25
- Outside of vehicles, traveling on . . . CV 411.65
- Overtaking and passing
 - Generally . . . CV 411.27
 - Hazardous zones . . . CV 411.33
 - Left of center, on . . . CV 411.27
 - Right, on . . . CV 411.27
 - Right of way, failure of overtaken vehicle to yield . . . CV 411.29
- Parking on highway . . . CV 411.67
- Passing (See subhead: Overtaking and passing)
- Pedestrians
 - Blind persons, failure to yield right of way to . . . CV 411.63
 - Control signals . . . CV 411.09
 - Crosswalks, right of way in . . . CV 411.61
 - Sidewalks, yielding right of way on . . . CV 411.53; CV 411.55
- Police officers, failure to comply with order or signal of . . . CR 521.331; CV 411.03
- Private property, rules on . . . CV 411.07
- Public safety vehicles
 - Duty of others . . . CV 411.57
 - "Emergency call" defined . . . CV 411.05
 - Red or stop signals, going past . . . CV 411.05
 - Right of way to, yielding . . . CV 411.57
- Racing, street . . . CV 411.23
- Reasonable control of vehicle . . . CV 411.15
- Reversible lanes, signals for . . . CV 411.11
- Riding on outside of vehicles . . . CV 411.65
- Right of way
 - Generally . . . CV 411.51
 - Blind persons, failure to yield to . . . CV 411.63
 - Crosswalks, pedestrians in . . . CV 411.61
 - Entering highway from other than roadway . . . CV 411.59
 - Failure of overtaken vehicle to yield . . . CV 411.29
 - Left turn . . . CV 411.09
 - Public safety vehicles, yielding to . . . CV 411.57
 - Sidewalks, yielding to pedestrians on . . . CV 411.53; CV 411.55
 - Stop or yield signs, at . . . CV 411.09
 - Yield signs, at . . . CV 411.09
- Right side of roadway, failure to drive on; exceptions . . . CV 411.21
- Sidewalks
 - Pedestrians on, yielding right of way to . . . CV 411.53; CV 411.55
 - Stopping in residential or business districts . . . CV 411.53
- Signal lights
 - Car signals . . . CV 411.49
 - Changing . . . CV 411.11
 - Flashing signals . . . CV 411.09
 - Lane change signals . . . CV 411.49
 - Pedestrian control signals . . . CV 411.09
 - Public safety vehicles going past red or stop signals . . . CV 411.05
 - Reversible lanes, for . . . CV 411.11
 - Traffic control devices . . . CV 411.09
 - Turning, for . . . CV 411.49

[References are to civil (CV) and criminal (CR) instruction numbers.]

TRAFFIC OFFENSES—Cont.

Space between moving vehicles

Generally . . . CV 411.39

Assured clear distance . . . CV 411.19

Speed

Assured clear distance . . . CV 411.19

Decreasing speed signals . . . CV 411.49

Proper speed . . . CV 411.17

Reasonable speed . . . CV 411.17

Starting and backing of vehicle . . . CV 411.47

Stopped vehicles, starting of . . . CV 411.47

Stop signs, right of way at . . . CV 411.09

Street racing . . . CV 411.23

Traffic control devices . . . CV 411.09

Traveling on outside of vehicles . . . CV 411.65

Turns

Car signals . . . CV 411.49

Hand and arm signals . . . CV 411.49

Intersections, at . . . CV 411.43

U-turns . . . CV 411.45

U-turns . . . CV 411.45

Willful and wanton disregard of safety of persons or property, operation in . . . CV 411.13

Yield signs, right of way at . . . CV 411.09

TRANSCRIPTS

Generally . . . CR 409.27; CV 309.07

TRANSFERRED INTENT

Proof of . . . CR 417.01

TRANSLATORS

Civil trials, use in . . . CV 301.13

Criminal trials, use in . . . CR 401.29

TRESPASS

Generally . . . CV 601.05

Aggravated . . . CR 511.211

Breaking and entering on land . . . CR 511.13(B)

Criminal

Generally . . . CR 511.21

Public amusement, trespass on place of . . . CR 511.23

Public amusement, criminal trespass on place of . . . CR 511.23

TRIAL, INSTRUCTIONS DURING

Generally . . . CR 101.31; CV 101.31

Admonitions to jury . . . CV 301.07

Experiments, prior to conducting of . . . CR 401.17; CV 309.17

Improper questions . . . CV 309.23

Jury view, prior to (See subhead: Scene visits, prior to)

Limited purpose evidence . . . CR 401.23; CV 309.05

Notetaking by jurors . . . CR 401.19; CV 301.09

Oath of jury, prior to administration of . . . CV 301.01

Orientation of new jury . . . CR 401.07; CV 301.05

Outline of trial, checklist for . . . CR 201.01; CV 201.01

Prior convictions and acts . . . CR 401.25; CR 409.11

Qualification of jury . . . CR 401.01; CV 301.03

Questions by jurors . . . CR 401.21; CV 301.11

Recess instructions

Generally . . . CR 401.11; CV 309.13

TRIAL, INSTRUCTIONS DURING—Cont.

Recess instructions—Cont.

Extended recess and separate hearings . . . CR 401.13

Requests to instruct, written . . . CR 401.27; CV 309.25

Scene visits, prior to

Generally . . . CR 401.15; CV 309.15

Eminent domain actions . . . CV 609.03

Self-representation . . . CR 401.03

Swearing of jurors, after . . . CR 401.09

Testimony, refusal or inability to give

Generally . . . CV 309.19

Defendant's . . . CR 409.07

Voir dire examination by counsel . . . CR 401.05

Witnesses, competence of . . . CV 309.21

U**UNDISPUTED FACTS**

General instructions . . . CR 101.51; CV 101.51

UNDISPUTED ISSUES

General instructions . . . CR 101.49; CV 101.49

UNDUE INFLUENCE

Tortious interference with expectancy of inheritance, as . . . CV 453.07

Will, making of . . . CV 633.05

UNFAIR COMPETITION

Malicious litigation, by . . . CV 439.05

UNIFORM COMMERCIAL CODE

Sale of goods (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))

Secured transactions (See SECURED TRANSACTIONS (U.C.C.))

USURY

Generally . . . CR 505.22

V**VANDALISM**

Burial sites . . . CR 509.05(D)

Cemeteries . . . CR 509.05(C)

Occupied structure . . . CR 509.05(A)

Property . . . CR 509.05(B)

Railroad grade crossing device . . . CR 509.101

Real property . . . CR 509.05(A)

VEHICLE IDENTIFICATION NUMBERS, TAMPERING WITH (See AUTOMOBILES AND OTHER MOTOR VEHICLES)**VEHICULAR ASSAULT**

Generally . . . CR 503.08

VEHICULAR HOMICIDE

Generally . . . CR 503.06; CR 503.07

Aggravated

Generally . . . CR 503.06

Peace officer as victim specification . . . CR 541.1414

[References are to civil (CV) and criminal (CR) instruction numbers.]

VEHICULAR HOMICIDE—Cont.

Manslaughter, vehicular . . . CR 503.06

Pregnancy, unlawful termination of

Generally . . . CR 503.07

Aggravated . . . CR 503.06

VENUE

Presentation of issue . . . CR 413.07

VERDICTS

Generally . . . CR 425.33; CV 323.01

Acceptance . . . CR 101.85; CV 101.85

Discussion of case by jurors after . . . CR 425.41

Eminent domain actions . . . CV 323.05; CV 609.23

Failure to reach; instructions during deliberations

. . . CR 429.09; CR 429.11; CV 319.07

Forms and instructions . . . CR 101.59; CR 425.33;
CV 101.59

Identity fraud actions, verdict form . . . CR 513.49

Impossible; instructions during deliberations . . . CV
319.07

Mistrial for failure to reach; instructions during deliberations . . . CV 319.07

Paternity actions . . . CV 705.13

Quotient verdicts for damages

Generally . . . CV 315.41

Sample final instructions . . . CV 207.27

Sample final instructions

Generally . . . CR 207.27

Quotient verdicts for damages . . . CV 207.27

Unanimous verdict . . . CR 207.39

Special verdicts, abolition of . . . CR 101.37; CV
101.37

Unanimous verdict, sample final instruction for
. . . CR 207.39

Will contests . . . CV 323.03; CV 633.13

VESSELS

Alcohol-related offenses (See ALCOHOL OFFENSES,
subhead: Watercraft and waterways violations)

Insurance on steamboat . . . CV 709.21

VICTIMS

Child victims under age ten, permanent disabling harm
to . . . CR 541.1426

Intimidation of . . . CR 521.04

Pregnant victim . . . CR 541.1423

VIDEOTAPES

Evidence, as . . . CR 409.31

VIOLENT CAREER CRIMINAL

Generally . . . CR 541.1424

Firearm by, use of . . . CR 523.132

VOIR DIRE

Generally . . . CR 101.21; CV 101.21

Counsel, examination by . . . CR 401.05

Grand jury . . . CR 301.01

Instructions

Common . . . CR 101.23; CV 101.23

Sample . . . CR 203.03

Instructions, sample . . . CV 203.03

Oath, instructions before administration of . . . CV
301.01

VOIR DIRE—Cont.

Welcoming remarks . . . CR 203.01; CV 203.01

VOLUNTARY MANSLAUGHTER

Generally . . . CR 503.03

VOYEURISM

Generally . . . CR 507.08

W**WARRANTIES**

Sale of goods, contracts for (See SALE OF GOODS,
CONTRACTS FOR (U.C.C.))

WATERCRAFT AND WATERWAYS VIOLATIONS

Alcohol-related (See ALCOHOL OFFENSES, subhead:
Watercraft and waterways violations)

Drug-related

Operating vessel under influence of alcohol or drugs
. . . CR 547.11(A)(1)

Prohibited alcohol or drug concentration, operating
vessel with . . . CR 547.11(A)(2)-(6)

**WEAPONS, DANGEROUS (See also ORDNANCE,
DANGEROUS)**

Biological weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Chemical weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Concealed weapons, carrying of . . . CR 523.12

Courthouse, in . . . CR 523.123; CR 523.123(A); CR
523.123(B)

Deadly weapons

Physical harm specification, and . . . CR 425.21

Purpose in use of . . . CR 417.01

Robbery with . . . CR 511.02

Detention facility, possession by person in

Generally . . . CR 523.131

Conveyance into facility . . . CR 521.35(A); CR
521.36

Explosive devices

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Firearms (See FIREARMS)

Habitation, discharging at or into . . . CR 523.161

Intoxication, use under . . . CR 523.15

Person under disability, possession by

After 3/23/15 . . . CR 523.13(A)

After 9/30/11 but before 3/23/15 . . . CR 523.13(A)

After 7/1/1996 but before 4/8/2004 . . . CR
523.13(B)

After 8/4/04 but before 9/30/11 . . . CR 523.13(A)

Before 7/1/1996 . . . CR 523.13

Physical harm specification, deadly weapons and
. . . CR 425.21

Prohibited premises, discharging on or near . . . CR
523.162

Purpose in use of deadly weapons . . . CR 417.01

Radiological or nuclear weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

[References are to civil (CV) and criminal (CR) instruction numbers.]

WEAPONS, DANGEROUS (See also ORDNANCE, DANGEROUS)—Cont.

- Robbery with deadly weapon . . . CR 511.02
- School premises, firearms, weapons or ordnance on or near
 - Discharging of firearm at or into school . . . CR 523.161
 - Illegal conveyance or possession . . . CR 523.122
 - Safety zone specification, school . . . CR 541.143
- Specifications
 - Physical harm, deadly weapons and . . . CR 425.21
 - School safety zone . . . CR 541.143
- Transactions, unlawful . . . CR 523.20

WILDLIFE VIOLATIONS

- Division of Wildlife orders, violation of . . . CR 551.11
- Exotic animals, crimes related to . . . CR 551.13
- Harassment of hunters . . . CR 551.07
- Hunting without permission . . . CR 551.05
- Injury of persons or property by hunters . . . CR 551.03
- Jacklighting . . . CR 551.01
- Wildlife officers, failure to obey orders of . . . CR 551.09

WILL CONTESTS

- Generally . . . CV 633.01
- Additional considerations . . . CV 633.09
- Burden of proof . . . CV 633.01
- Capacity to make will . . . CV 633.03
- Definitions . . . CV 633.01
- Fraud . . . CV 633.07
- Mental capacity . . . CV 633.03
- Probate defined . . . CV 633.01
- Revocation of will, determination of . . . CV 633.11
- Sound mind and memory, determination of . . . CV 633.03
- Undue influence . . . CV 633.05
- Verdict . . . CV 323.03; CV 633.13

WILLFUL OR WANTON MISCONDUCT

- Negligence . . . CV 401.41
- Traffic offenses . . . CV 411.13

WITNESSES

- Acts of witnesses as evidence . . . CR 409.33
- Competence
 - Paternity claim, parties in . . . CV 705.11
 - Questioned; instructions during trial . . . CV 309.21
- Defined . . . CR 521.04; CR 521.24
- Expert witnesses (See EXPERT WITNESSES)
- Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05
- Interpreters and translators
 - Civil trials, use in . . . CV 301.13
 - Criminal trials, use in . . . CR 401.29
- Intimidation of . . . CR 521.04
- Testimony, refusal or inability to give
 - Generally . . . CV 309.19
 - Defendant's . . . CR 207.15; CR 409.07

WORKERS' COMPENSATION CLAIMS

- Generally . . . CV 427.01
- Fraud
 - Generally . . . CR 513.48
 - Value . . . CR 425.23

WRITTEN INSTRUCTIONS

- Generally . . . CR 101.61; CV 101.61

WRONGFUL CONVEYANCE

- Generally . . . CV 447.01

WRONGFUL DEATH

- Compensatory damages . . . CV 315.49
- Employer intentional tort . . . CV 537.09
- Intervening causes . . . CR 417.25

WRONGFUL POSSESSION

- Generally . . . CV 447.01
- Conversion (See CONVERSION)

